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No. 87-_____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

BEMIS PENTECOSTAL CHURCH, *et al.*,
Appellants,

v.

STATE OF TENNESSEE, *et al.*,
Appellees.

On Appeal From The Supreme Court Of The State Of Tennessee

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether application of the prior registration and disclosure requirements of the Tennessee Campaign Financial Disclosure Act of 1980, T.C.A. § 2-10-101, *et seq.* (the Act), to non-political organizations such as appellant churches in a referendum campaign (as opposed to a partisan candidate election campaign) violates the free speech and corresponding associational rights of appellants under the First amendment to the United States Constitution as guaranteed in *Talley* v. *California.*

2. Whether the Act is unconstitutional under the Free Exercise and Establishment Clauses of the United States Constitution because it: (a) contains vague requirements which have been interpreted as requiring churches to, against their religious belief, register with the state as political campaign committees and designate political treasurers as a precondition to speaking, except from the pulpit, on moral concerns which have become public issues to be decided at a referendum; and (b) also requires a public filing of disclosure reports of contributions to and expenditures by churches.

3. In a case where the standard of review is strict scrutiny, and there is nothing in the legislative history which would support the necessity of applying the Act to churches in a referendum campaign, can the state meet its burden of proving the existence of a compelling state interest for such an application without introducing any evidence at trial?

PARTIES

The appellants in this action are: Bemis Pentecostal Church, Calvary Baptist Church, Englewood Baptist Church, First Assembly of God, First Baptist Church of Bemis, First Baptist Church of Jackson, Malesus Baptist Church, North Jackson Baptist Church, Northside Assembly of God, Poplar Heights Baptist Church, Skyline Church of Christ, West Jackson Baptist Church, and Woodland Baptist Church.

The appellees in this action are: the State of Tennessee, Michael Cody, as Attorney General of the State of Tennessee, Jerry Woodall, as District Attorney of the Twelfth Judicial Circuit of the State of Tennessee, and David Collins, as State Election Coordinator of the State of Tennessee.

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Tennessee Campaign Financial Disclosure Act of 1980, T.C.A. § 2-10-101, *et seq.*	*passim*

IN THE

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STATE OF TENNESSEE, *et al.*,
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On Appeal From The Supreme Court Of The State Of Tennessee

JURISDICTIONAL STATEMENT

INTRODUCTION

Appellants, thirteen churches from the Jackson, Tennessee, area, appeal from the judgment of the Supreme Court of Tennessee entered May 26, 1987, holding constitutional the application to them of the Tennessee Campaign Financial Disclosure Act of 1980 so as to require prior registration with the state as a "political campaign committee" and appointment of a "political treasurer" before speaking out on a referendum issue of moral concern and the subsequent filing of financial disclosure reports. This jurisdictional statement is submitted to show that this Court has jurisdiction of this appeal and that substantial federal questions are involved.

OPINIONS BELOW

The opinion of the Chancery Court of Madison County, Tennessee, filed on October 30, 1985, is not reported and is reprinted in the Appendix to this Jurisdictional Statement at pages 33a-39a. The opinion of the Court of Appeals of Tennessee filed August 26, 1986, is unreported and is reprinted in the Appendix to this Jurisdictional Statement at pages 20a-32a. The opinion of the Supreme Court of Tennessee filed May 26, 1987, is reported at 731 S.W.2d 897 and is reprinted in the Appendix to this Jurisdictional Statement at pages 1a-19a. The judgment of the Supreme Court of Tennessee from which this appeal is taken is unreported and is reprinted in the Appendix herein at pages 40a-41a.

JURISDICTION

The appeal in this case is brought pursuant to 28 U.S.C. § 1257(2) as an appeal from a final judgment rendered by the highest court of a state in which a decision could be had and in which there was drawn into question the validity of a state statute on the ground that it was repugnant to the Constitution of the United States, and the decision was in favor of the law's validity. The statute, the Tennessee Campaign Financial Disclosure Act of 1980, T.C.A. § 2-10-101, *et seq.*, was challenged as being unconstitutional both on its face and as applied. Appeal under 28 U.S.C. § 1257(2) is proper when the constitutional challenge is to the statute as applied. *Cohen* v. *California*, 403 U.S. 15, 17-18 (1971); *Warren Trading Post Co.* v. *Arizona Tax Commission*, 380 U.S. 685, 686 (1965).

The judgment appealed from was entered on May 26, 1987. The Notice of Appeal was filed on August 20, 1987, in the Tennessee Supreme Court. (App. pp. 45a-47a). Counsel has been advised that the record is still retained by the Tennessee Supreme Court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions involved in this appeal are the First and Fourteenth Amendments to the United States Constitution. The statute involved is the Tennessee Campaign Financial Disclosure Act of 1980, T.C.A. §2-10-101, *et seq*. These constitutional provisions and the Act are set out verbatim in the Appendix to this Jurisdictional Statement beginning at page 67a.

STATEMENT OF THE CASE

A. Material Facts Relating To Appellants' Constitutional Claims

In August, 1984, the City of Jackson, Tennessee, held a local option referendum to determine whether the sale of liquor by the drink would be approved by the residents of the city. Prior to the referendum, appellants, thirteen Jackson area churches, without first registering with the state as "political campaign committees," took various measures to voice their continued opposition to the adoption of on-premises liquor consumption in Jackson. They purchased radio, television, and newspaper advertisements expressly opposing the adoption of the local liquor option. At least one of the appellants contributed money to a political campaign committee, Citizens Against Drug Abuse, which actively campaigned to defeat the local option proposal. Another appellant contributed $100 to the Madison-Chester Association of Baptists for the purchase of advertising expressing opposition to the legalization of the sale of liquor by the drink. Concurrently, a number of the appellants, as part of their regular and continuing program of broadcasts of their religious services, broadcast sermons in which opposition to legalized liquor consumption was the main topic. Church newsletters regularly published and distributed by appellants to their members and interested nonmembers included

expressions of opposition to the adoption of the local option. The total amount contributed and spent by all appellants in addressing the issues was $5,150. In several instances the money came from the general fund of the church; in some cases special offerings were received. No church filed a disclosure statement as required by the terms of the Tennessee Campaign Financial Disclosure Act.

Before the election scheduled for August 2, 1984, David Collins, the Election Coordinator of the state, received an anonymous letter concerning the legality of a newspaper advertisement placed in a local newspaper by one of the appellants. This advertisement urged voters to cast their ballot against the local option, identified the sponsoring church, and offered to provide transportation to the polls on election day. Because a local election was involved, Mr. Collins forwarded a copy of the letter and advertisement to the local District Attorney General, Jerry Woodall, for any appropriate action. In his letter of transmission, he stated, "It would appear to me that the church in question has violated the provisions of section 2-10-105, Tennessee Code Annotated, in failing to designate a political treasurer and thereafter to file the required campaign disclosure statements." On August 9, 1984, Attorney General Woodall requested a formal opinion from the State Attorney General's Office, submitting the question of whether a church that donates funds to a group organized to defeat a local liquor measure must comply with the Campaign Financial Disclosure Act. On August 29, 1984, the Attorney General issued his opinion that such a church would be required to file a disclosure statement with the County Election Commission under the definition of "political campaign committee" contained in the statute even though "[t]he General Assembly may not have intended this result." (Stip. of Facts Ex. 4). The following day, Attorney General Woodall notified

appellants that they must comply with the Act by September 17, 1984.

B. The Proceedings Below In Which The Federal Questions Were Presented

On September 10, 1984, plaintiffs filed this declaratory judgment action in state court. They sought a temporary injunction to prevent enforcement of the Act pending the outcome of this litigation. An agreed order was entered on September 13, 1984, in which the state agreed that the failure of the appellants to file certain statements and disclosure reports as required by the Act would not be considered a willful violation of the Act for a period not to exceed thirty (30) days after the final disposition of this case on appeal.[1]

The complaint alleged that the Act was unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment to the United States Constitution; that application of the Act to the appellants violated the Equal Protection Clause of the Fourteenth Amendment; that application of the Act to the appellants violated their rights to free speech and the free exercise of religion; and that application of the Act to the appellants violated the Establishment Clause of the First Amendment. (App. pp. 48a-53a). The plaintiffs continued to assert each of these claims before the trial court in pretrial and post-trial briefs.

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[1] Because the appellants are still subject to criminal prosecution thirty days after the final disposition of this case, the issue of mootness has, quite correctly, never been raised despite the fact that the referendum has long passed. Further, as the Tennessee Supreme Court noted (Slip Op. at 12; App. p. 11a), the situation is likely to repeat itself as other referenda are held without the chance for a final ruling from the courts. *See, First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 774-775 (1978).

The case was heard on August 7, 1985, in Madison County Chancery Court. The plaintiff churches called four pastors and the Executive Director of the Tennessee Baptist Convention as witnesses. A stipulation of facts was also submitted as part of the evidence at trial. (App. pp. 54a-56a). Among the stipulations were included the facts that each church had two or more members in its congregation and that the local option had been defeated by a vote of 6,514 to 6,474.

The pastors testified that their involvement in the referendum debate resulted from moral, not political, concerns and that they considered their actions to be part of the religious mission of their churches (Tr 9, 14, 32, 40, 57). This mission includes carrying their message beyond the membership of the church to all in the community (Tr 17, 76-77).

The opposition to alcohol consumption was Biblically-based (Tr 14, 55). *See,* Proverbs 20:1. Some of the appellant churches sponsored Alcoholics Anonymous groups and regularly addressed the issue of alcohol and drug abuse in Sunday School (Tr 19-20, 40-41, 56).

The pastors testified that their churches had not, and would not, get involved in partisan political campaigns as a matter of religious conviction (Tr 18, 41, 77). They emphasized that they were theologically opposed to registering or acting as political campaign committees (Tr 42, 111; App. pp. 61a-63a). An official resolution of the Southern Baptist Convention which opposed member churches registering as "political campaign committees" on theological grounds was introduced into evidence (Tr 72; App. pp. 61a-63a).

There was also testimony regarding theological opposition to disclosure of contributions of church members based on the Biblical command to give in secret (Tr 101). The pastors further testified that the state's position that

their actions subjected them to the requirements of the Act deterred them from any involvement in a subsequent referendum on a local liquor issue held in November of 1984 (Tr 15, 66-67).

The plaintiffs also called four expert witnesses—Forest Montgomery, counsel for the National Association of Evangelicals; Rev. Dean Kelley, a Methodist minister and Director of Religious and Civil Liberties of the National Council of Churches of Christ in the U.S.A.; Dr. Robert Maddox, a Southern Baptist minister and formerly Special Assistant for Religious Liaison to President Carter and currently Executive Director of Americans United for Separation of Church and State; and Prof. Robert Destro, a member of the United States Commission on Civil Rights and Professor of Law at The Catholic University of America. These experts, who spoke on behalf of constituencies that covered the broad spectrum of religious traditions, also testified regarding theological opposition to registration as campaign committees by churches and of the inhibiting effect such application of Tennessee's laws would have on churches that were members of their constitutencies (*See* App. pp. 63a-65a).

The trial court ruled against the plaintiffs on all issues raised and found that the churches were political campaign committees within the meaning of that term in the Act and that the Act was constitutional. On appeal to the Tennessee Court of Appeals, the churches again raised all of the claims made in the original complaint in the questions presented to the court and briefed each issue.

The Tennessee Court of Appeals agreed that the churches were political campaign committees under the Act, but reversed the trial court and declared the law unconstitutional. The court of appeals found that the Act violated the First Amendment right to free speech because the state had demonstrated no compelling inter-

est for application of the law in a referendum campaign as distinguished from candidate elections. (App. pp. 26a-28a). Because the court found the Act violated the Free Speech Clause of the First Amendment, it found it unnecessary to address any of the other issues raised by the appellants. (App. p. 28a).

On appeal to the Tennessee Supreme Court, all of the issues raised in the original complaint were included in the questions presented, and both parties briefed each issue. The Tennessee Supreme Court reversed the court of appeals and reinstated the judgment of the trial court. The Tennessee Supreme Court in its opinion, although noting that a number of constitutional issues had been raised on appeal, stated that the sole determinative issue was whether the Act violated the Free Speech Clause of the First Amendment and stated, without further explanation, that it found it unnecessary to address any of the other claims raised in order to resolve the case. (App. pp. 10a-11a). The Tennessee Supreme Court ruled that the state had a compelling interest in application of the Act in referendum campaigns. (App. pp. 12a-13a).

C. The Tennessee Campaign Financial Disclosure Act of 1980

The Tennessee Campaign Financial Disclosure Act of 1980 is set out in its entirety in the Appendix beginning at page 68a. Section 2-10-102(10) of the Act defines "political campaign committee" as follows:

> (A) A combination of two (2) or more individuals, including any political party governing body, whether state or local, making expenditures, except as provided for in subdivision (3) of this section, to support or oppose any candidate for public office or measure, but shall not include a voter registration program;

> (B) Any corporation or any other organization making expenditures, except as provided for in subdivision (3) of this section, to support or oppose a measure; or
>
> (C) Any committee, club, association or other group of persons which receives contributions or makes expenditures to support or oppose any candidate for public office or measure during a calendar quarter in an aggregate amount exceeding two hundred fifty dollars ($250).

Subdivision (3) of § 2-10-102 gives a very broad definition of "contribution" and then lists several exceptions to the definition including:

> (B) Any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned wholly or in part or controlled by any political party, political committee, or candidate;
>
> * * *
>
> (D) Any written, oral, or electronically transmitted communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to public office.

Section 2-10-105(a) requires each political campaign committee to file statements of all contributions and expenditures. Section 2-10-105(e) requires that political campaign committees appoint a political treasurer and register with the Secretary of State before making any expenditure or receiving any contribution. Section 2-10-107 specifies the contents of the required reports. Among other things, the name and address of all persons contributing more than $100 must be included. The official disclosure statement requires the "appointing authority"

and "political treasurer" of the political campaign committee to both swear that they have not violated the Act "in letter or in spirit." (Stip. of Facts Ex. 5). Under § 2-10-103 all statements filed are open to public inspection. Section 2-10-109 requires the Attorney General to investigate any sworn complaint filed by any registered voter. It also allows the Attorney General and District Attorney General to seek injunctive relief or fines against any political campaign committee in order to enforce this Act. Section 2-10-110 subjects campaign committees that fail to file required statements to a $1,000 fine plus normal misdemeanor penalties.

THE QUESTIONS ARE SUBSTANTIAL

I. In Light Of The Protection Afforded To Anonymous Speech In *Talley* v. *California*, A Substantial Question Is Presented As To The Validity Of The Justification For Disclosure Requirements, Justified In Candidate Elections, And The Requirement Of prior Registration When Applied In Referenda.

The Act under review in this case is a comprehensive scheme regulating almost all participation in public political debates during candidate and referendum campaigns. It applies to any combination of two or more individuals that spend any amount of money in voicing their opinions. The state claims that the Act promotes an informed electorate. The explanation given for this apparent paradox is that it is more important that who is speaking and how much they are spending become public knowledge than it is to have unfettered entry into the public discourse.

This case presents the issue of whether such a notion justifies the extensive regulatory reach of the Act or whether the idea that it is the government's place to determine what information is most critical to the public debate "is a statist notion . . . repugnant to American tradition." *Parham* v. *J.R.*, 442 U.S. 584, 603 (1979). For,

as Justice O'Connor has stated, "The most basic guarantee of the First Amendment [is] that citizens, not the government, control the content of public discussion." *Roberts* v. *United States Jacyees*, 468 U.S. 609, 634 (1984) (O'Connor, J., concurring).

A. This Court Has Never Directly Addressed The Issue Of The Constitutionality Of Prior Registration And Disclosure Requirements In Referenda.

This Court has always recognized that laws regulating participation in election campaigns infringe upon First Amendment rights and that there is a fine line separating those regulations that are justified by a compelling state interest from those that are not. This case calls for the Court to mark the boundary between the constitutional protection given to anonymous political speech in *Talley* v. *California*, 362 U.S. 60 (1960),[2] and the governmental interest justifying campaign disclosure laws recognized in *Buckley* v. *Valeo*, 424 U.S. 1 (1976) (per curiam).

In *Buckley*, this Court upheld most, but not all, of the provisions of the Federal Election Campaign Act of 1971. Among the provisions upheld were some of those containing disclosure requirements. The Court found that the disclosure requirements vindicated compelling governmental interests. The interests served were:

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[2] The appellants never attempted to hide behind a cloak of anonymity in speaking out against legalized liquor sales. However, the protection afford to anonymous speech in *Talley* inevitably collides with the prior registration and disclosure requirements of the Tennessee Campaign Financial Disclosure Act. When it is alleged that a statute is substantially overbroad under the First Amendment, a party may assert the rights of others differently situated, *Schaumburg* v. *Citizens for a Better Environment*, 444 U.S. 620, 634 (1980), and the Court may consider application of the statute in factual contexts besides that at bar, *NAACP* v. *Button*, 371 U.S. 415, 432 (1963).

> First, disclosure provides the electorate with information "as to where political campaign money comes from and how it is spent by the candidate" in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.
>
> Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return . . .
>
> Third, and not least significant, record keeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations described above.

Id. at 66-68 (footnotes omitted).

In *First National Bank of Boston* v.*Bellotti*, 435 U.S. 765 (1978), the Court first addressed the constitutionality of a law that regulated referendum campaigns. The Massachusetts statute challenged in *Bellotti* barred corporate participation in referendum campaigns. The Court struck the law down. In doing so, it specifically held that the government interest that justified the regulation of partisan candidate elections recognized in *Buckley* "simply is not present in a popular vote on a public issue." *Id.* at 791.

Again, in *Citizens Against Rent Control* v. *Berkeley*, 454 U.S. 290 (1981), the Court found the distinction between candidate elections and referenda dispositive in

striking down an ordinance limiting contributions in referendum campaigns. The Court said, "*Buckley* identified a single narrow exception to the rule that limits on political activities were contrary to the First Amendment. The exception relates to the perception of undue influence of large contributors to a *candidate*." *Id.* at 296-297 (emphasis in original).

However, the Court has never passed on the validity of disclosure requirements in referendum campaigns. Nor has the Court addressed the requirement of prior registration before speaking out in a public debate. This allowed the State of Tennessee to argue below that its disclosure and registration requirements were valid because they were less restrictive than the regulations struck down in *Bellotti* and *Citizens Against Rent Control*. But the regulations in those two cases were not declared invalid because the state could have used a less restrictive means to attain the end sought. They were declared unconstitutional because no compelling state interest was identified that was vindicated by the statute.

This is the crucial question that should be resolved by this Court—is any compelling interest of the state served by regulating speech during a referendum campaign?[3] Advocacy during a referendum campaign is the advocacy of ideas. More than any other type of speech, the free exchange of ideas on public issues should be "uninhibited, robust, and wide open." *New York Times* v.*Sullivan*, 376 U.S. 254, 270 (1964). Yet, it has been acknowledged that disclosure requirements inhibit entry into the public

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[3] The Tennessee Supreme Court acknowledged that the issues in this case involved "fundamental" federal rights at the "core of the political process" (Slip Op. at 12; App. p. 11a). The Tennessee Court of Appeals in this case found that the free speech issue was so substantial that it required invalidating the statute to the extent that the law was applied to referenda.

debate. *Buckley*, at 68, *FEC* v. *Massachusetts Citizens for Life*, ___ U.S. ___, 107 S.Ct. 616, 626 (1986). The state should be strictly held to its burden of proving the necessity of each particular restraint in this sensitive area of First Amendment activity.

B. Does The Expenditure Of Funds Justify Restrictions On Issue-Related Speech On Public Affairs That Have Been Declared Unconstitutional In Other Circumstances?

Although this Court recognized a justification for disclosure requirements in candidate elections in *Buckely*, it has also held that, at least in some circumstances, the First Amendment protects anonymity in political speech. *Talley* v. *California*, 362 U.S. 60 (1960). In *Talley*, the Court struck down an ordinance prohibiting the distribution of anonymous handbills. This year alone, portions of two state campaign laws prohibiting the distribution of anonymous campaign literature have been struck down on the basis of this Court's decision in *Talley*. *People* v. *White*, 116 Ill.2d 171, 506 N.E.2d 1284 (1987); *Wilson* v. *Stocker*, 819 F.2d 943 (10th Cir. 1987) (Oklahoma statute). The laws in *White* and *Wilson* were struck down despite the argument that they were more narrowly drawn than the law in *Talley* because they applied only to material meant to influence the outcome of an election.[4] The court in each case rejected the assertion that the state's interest in an informed electorate justified the burden on free speech.

It has often been noted by the courts, and it bears repeating here, that anonymous political speech has played an important role in our history. The Federalist Papers, the most influential contribution to public political debate in our history, were published anonymously. The cornerstone of our democratic process is the ano-

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[4] The literature involved in both *White* and *Wilson* referred to specific candidates running for office.

nymity of the secret ballot. Anonymity in addressing a public issue, in contrast to an anonymous relationship with a candidate, does not pose the threat of those "'private arrangements' that are inconsistent with democratic government." *Brown* v. *Hartlage*, 456 U.S. 45, 56 (1982).

The Tennessee statute challenged here prevents anonymous political speech on all but the smallest scale. Application of the Act is triggered by the expenditure of any funds or the receipt of any contribution. Registration is required *before* any expenditure or contribution can legally be made. T.C.A. § 2-10-105(e). "Yet this Court has never suggested that the dependence of a communication on the expenditure of money operates itself to introduce a nonspeech element or to reduce the exacting scrutiny required by the First Amendment." *Buckley*, 424 U.S. at 16.

The state urges that the disclosure requirements are justified in referendum campaigns because they promote an informed electorate and prevent corruption of the electoral process. The corruption argument is the same as that made and rejected in *FEC* v. *National Conservative Political Action Committee*, 470 U.S. 480, 498 (1985), where this Court commented,

> [P]recisely what the "corruption" may consist of we are never told with assurance. The fact that candidates and elected officials may alter or reaffirm their own positions on issues in response to political messages paid for by the PACs can hardly be called corruption, for one of the essential features of democracy is the presentation to the electorate of varying points of view.

In this case also, the nature of the threat of corruption has never been articulated. There are not even any candidates to be influenced, only voters.

The asserted interest in an informed electorate has been addressed several times. "The State's fear that voters might make an ill-advised choice does not provide the State with a compelling justification for limiting speech." *Brown* v. *Hartlage*, 456 U.S. 45, 60 (1982); *accord*, *Commonwealth* v. *Dennis*, 329 N.E.2d 706, 709 (Mass. 1975) (striking down a law prohibiting anonymous campaign literature).

The Tennessee Supreme Court stated, "Vigorous, free, well-informed, and public debate can only be enhanced by disclosure of campaign financing in both referenda and candidate elections." (Slip Op. at 14; App. p. 13a). Assuming that promoting an informed electorate is a compelling state interest, the First Amendment requires that the Act's restrictions have a substantial relationship to that interest. *Buckley*, 424 U.S. at 64.

The court suggested that the legislature was justified in enacting the statute to "remedy . . . the effects of the concentration of wealth on elections." (App. p. 12a). However, the Act does not only apply to those that expend vast amounts but is triggered by the spending of a single dollar (see § 2-10-102(10)(A)). Without a reasonable threshold amount the Act has no substantial relationship to the asserted purpose.

Appellants believe that the means chosen by Tennessee is likely to discourage entry into the debate of the very parties it should be encouraging—the smaller, less wealthy, less powerful and unpopular. The voices of wealthy interests are going to be heard, disclosure requirements or no disclosure requirements. The court in *Wilson* v. *Stocker*, 819 F.2d 943, 949-950 (10th Cir. 1987), found that the prohibition of anonymous campaign literature would discourage some from speaking out and thereby hinder rather than promote the goal of an informed electorate. "A State's claim that it is enhancing the ability of its citizenry

to make wise decisions by restricting the flow of information to them must be viewed with some skepticism." *Anderson* v. *Celebrezze*, 460 U.S. 780, 798 (1983).

A close look at the filing requirements of the Act reveals further its ineffectiveness in achieving the asserted interests. Information regarding expenditures during the ten day period immediately prior to an election is not required to be filed until after the election. During a local election most expenditures will be made during the final ten days before balloting. This information is obviously of no help to the electorate in deciding how to vote. Even contributions and expenditures made more than ten days prior to the election need not be filed until seven days before the election. Filing is complete upon the postmarked date of a registered mailing. Thus, with the intervening weekend, there is little opportunity for voters to obtain the information.

The North Dakota Supreme Court found that "our hopes must be in the good sense and decency of the electorate." *State* v. *North Dakota Education Association*, 262 N.W.2d 731, 736 (N.D. 1978) (striking down a law prohibiting anonymous political advertisements). This Court has noted, "Our cases reflect a greater faith in the ability of individual voters to inform themselves about campaign issues." *Anderson*, 460 U.S. at 797. This faith in the people and in a free, vigorous and inquisitive press has stood us well for 200 years. This Court is asked here if this faith is now misplaced.

C. Does The Association Of Citizens With One Another For The Purpose Of Speaking Out On Public Issues Justify Restrictions That Would Be Unconstitutional Under *Talley* If Placed Upon Individuals?

This Court in *Roberts* v. *United States Jaycees*, 468 U.S. 609, 622 (1984), stated:

> An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed. [citation omitted] According protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority. [citation omitted] Consequently, we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends. [citations omitted]

The Tennessee Act applies to, among other groups, any "combination of two (2) or more individuals." T.C.A. § 2-10-102(10).

> There are, of course, some activities, legal if engaged in by one, yet illegal if performed in concert with others, but political expression is not one of them. To place a Spartan limit—or indeed any limit—on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is clearly a restraint on the right of association.

Citizens Against Rent Control, 454 U.S. at 296. The Tennessee Act leaves individuals free to expend any amount of money in a referendum campaign without any disclosure or registration requirements whatsoever. This disparity between the treatment of individuals and any groups of two or more individuals raises a question regarding the right to freedom of association.

II. A Substantial Question Is Presented As To Whether Any State Interest Extends To The Point Of Justifying Application Of Prior Registration And Disclosure Requirements To Non-Political Organizations In General And Churches In Particular.

Several lower federal courts have discussed the constitutional implications of applying campaign disclosure laws

to non-political organizations, but this Court has never addressed the issue. This appeal places the issue before this Court. However, in this case the issue raises additional constitutional questions because Tennessee has applied its Act to churches, institutions given special protection by the Religion Clauses of the First Amendment.

Every federal court that has addressed the issue of the application of disclosure laws to nonpartisan groups has recognized that the First Amendment implications are graver and the governmental interest diminished in comparison to the application of such laws to the partisan campaign committees of candidates.

Faced with the attempted application of the Federal Election Campaign Act to a nonpartisan group in *United States* v. *National Committee for Impeachment*, 469 F.2d 1135 (2d Cir. 1972), the Second Circuit felt compelled to give a limiting interpretation to the Act which excluded such groups from its regulations in order to avoid constitutional infirmities. The court ruled that the Act only applied to groups "the major purpose of which is the nomination or election of candidates." *Id.* at 1141. Likewise, in *American Civil Liberties Union* v. *Jennings*, 366 F.Supp. 1041 (D. D.C. 1973), *vacated as moot sub nom Staats* v. *ACLU*, 422 U.S. 1030 (1975), a three judge court adopted the same interpretation as the Second Circuit in order to exclude the ACLU from the purview of the Act and thereby avoid constitutional problems.

In *Buckley* v. *Valeo*, 519 F.2d 821 (D.C. Cir. 1975) (en banc), the court struck down a disclosure requirement contained in § 437(a) of the Federal Election Campaign Act because it could be applied to nonpartisan "issue" groups, possibly even churches. *Id.* at 871. The court distinguished between such a provision and one more narrowly drawn to apply to groups more directly related to the political process.

> But unlike contributions and expenditures made solely with a view to influencing the nomination or election of a candidate . . . issue discussions unwedded to the cause of a particular candidate hardly threaten the purity of elections. Moreover, and very importantly, such discussions are vital and indispensible to a free society and an informed electorate. Thus the interest of a group engaging in nonpartisan discussion ascends to a high plane, while the governmental interest in disclosure correspondingly diminishes.
>
> The Supreme Court has indicated quite plainly that groups seeking only to advance discusion of public issues or to influence public opinion cannot be equated to groups whose relation to political processes is direct and intimate.

Id. at 873.[5]

Finally, in *New York Civil Liberties Union* v. *Acito*, 459 F.Supp. 75 (S.D. N.Y. 1978), the court addressed a situation almost identical to that presented here. It considered the constitutionality of a state campaign disclosure requirement applied to a nonpartisan organization in a referendum campaign. The court said that the state's general interest in assuring that elections are free of corruption and ignorance was not at issue. The court found it necessary to focus on the "more limited governmental interests" in applying the Act to a wide spectrum of nonpartisan groups. Finding that this limited interest did not justify the resulting burdens on free speech rights, the court struck down the law.

The instant case demonstrates the potential reach of the unrestrained application of campaign disclosure laws and the need for a definitive ruling on the question pre-

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[5] Review of the Second Circuit's decision with regard to this section was not sought when the rest of the case was appealed to the Supreme Court.

sented. By applying the Act to churches speaking out on moral issues, Tennessee has implicated not only the free speech rights of the appellants but also their free exercise rights. The record establishes that the appellant churches oppose alcohol on religious grounds and perceive the spreading of their message against alcohol to be a part of their religious mission. The act of registering their churches as political campaign committees is repugnant to appellants. The record establishes and the Tennessee Supreme Court found that they shun involvement in partisan politics. (App. p. 5a). To require registration with the state prior to conducting activities that are a natural and historic part of their religious mission is tantamount to licensing their ministries.

This registration provision, requiring a self-proclamation as a political body, is more offensive to appellants, for religious reasons, than the filing of financial disclosure reports. It acts as an unconstitutional prior restraint on the free exercise of religion. *Murdock* v. *Pennsylvania*, 319 U.S. 105, 114 (1943); *Cantwell* v. *Connecticut*, 310 U.S. 296, 306 (1940). A substantial question presented by this case is whether the state's interest in compelling disclosure of campaign finances is of such a scope as to justify a definition of campaign committees that includes churches speaking out on moral issues.

The scope of a legislature's power to regulate in areas touching upon First Amendment rights, as distinguished from other areas, was explained in *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 639 (1943):

> The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a "rational basis" for adopting. But freedom of speech and press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction

> only to prevent grave and immediate danger to interests which the State may lawfully protect.

The Tennessee legislature obviously recognized that too broad an application of the Campaign Financial Disclosure Act could violate First Amendment rights. It therefore added the following exemption to the Act:

> "Contributions" shall not be construed to include the following:
>
> * * *
>
> (B) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless such facilities are owned wholly or in part or controlled by any political party, political committee or candidate.

T.C.A. § 2-10-102(3).

The legislature obviously intended this exemption to allow the news media to cover, report on, comment on, and even make endorsements in, political campaigns without having to comply with the provisions of the Act. This deference to the First Amendment rights of the press is understandable and laudable. "But the press does not have a monopoly on either the First Amendment or the ability to enlighten." *Bellotti*, 435 U.S. at 782. As Chief Justice Burger explained in his concurring opinion in *Bellotti*,

> Because the First Amendment was meant to guarantee freedom to express and communicate ideas, I can see no difference between the right of those who seek to disseminate ideas by way of a newspaper and those who give lectures or speeches and seek to enlarge the audience by publication and wide dissemination. "[T]he purpose of the Constitution was not to erect the press into a privileged institution but to protect all persons in their right to print what they will as well as to utter it.' . . . the liberty of the press

> is no greater and no less. . .' than the liberty of every citizen of the Republic." *Pennekamp* v. *Florida*, 328 U.S. 331, 364 (1946) (Frankfurter, J., concurring).

Id. at 802.[6]

The state has shown no compelling interest for not affording the same exemption as is given to the institutional press to organizations such as appellant churches that are equally, if not more, removed from partisan political activity. Yet, the burden on their First Amendment rights is just as great as would be the burden on the news media. The state has asserted no distinct interest in regulating the speech of churches that would not apply to news media. The news media wield tremendous influence and themselves can be influenced by major advertisers. Also, in this age of media conglomerates with local monopolies, a fact noted by Chief Justice Burger in his concurrence in *Bellotti*, 435 U.S. 796-797, the press is likely to speak with less diversity than churches.

Even if one accepted the view that the institutional press has a special status under the Free Press Clause, the First Amendment would require an exemption for the appellant churches. They are given special protection under the Religion Clauses. *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696 (1976); *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94 (1952). It is not disputed that the appellants were acting solely out of religious conviction when engaging in the speech which the state attempts to regulate here. Such religious speech is protected by the First Amendment. *Widmar* v. *Vincent*, 454 U.S. 263 (1981).

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[6] "The Court has not yet squarely resolved whether the Press Clause confers upon the 'institutional press' any freedom from government restraint not enjoyed by all others." *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 798 (1978) (Burger, C.J., concurring).

The implications for the free exercise rights of the appellants of the application of the Act to them was not completely lost on the Attorney General of Tennessee or the Tennessee Supreme Court. The record established that several of the appellants regularly broadcast their Sunday services on local radio and television stations during air time purchased by appellants. It also established that during the broadcast of certain of these services, the main topic of the sermon was the church's opposition to the ballot measure. The Attorney General wrote a letter to one of the appellants stating his view that these sermons were protected from regulation by the Free Speech and Free Exercise Clauses of the First Amendment. The Tennessee Supreme Court ruled that these sermons came under the same exemption given to the press in § 2-10-102(3)(B). The Tennessee Supreme Court held that these sermons "are not and cannot be considered campaign contributions or expenditures, regardless of whether they advocate a particular election result or not . . . as these acitivities are protected by the First Amendment." (Slip Op. at 17; App. p. 15a).

However, neither the Attorney General nor the Tennessee Supreme Court could articulate why the exact same message from the exact same source, motivated by the exact same religious convictions, and distributed through the same broadcast facilities on purchased air time but in the form of a "political advertisement" was deserving of less First Amendment protection. The court in *National Committee for Impeachment* stated, "No distinction may be made for First Amendment purposes between a political editorial and a paid political advertisement." 469 F.2d at 1140.

This Court has held:

> In the realm of protected speech, the legislature is constitutionally disqualified from dictating the sub-

> ject about which persons may speak and the speakers who may address a public issue. [citation omitted] If a legislature may direct business corporations to "stick to business," it also may limit other corporations—religious, charitable, or civic—to their respective "business" when addressing the public. Such power in government to channel the expression of views is unacceptable under the First Amendment.

First National Bank of Boston v. *Bellotti*, 435 U.S. at 784-785. The Tennessee Supreme Court exempts the institutional press from the Campaign Financial Disclosure Act, thus clearly recognizing that the law does create a burden on First Amendment rights. However, it in effect tells churches that they can be exempt only if they stick to their "business" of preaching from the pulpit.

The Tennessee Supreme Court's opinion added further uncertainty to the scope of the Act. The Act had always been interpreted by the Attorney General and the Courts to require "election outcome specific advocacy." The certainty of this objective standard was negated when the State Supreme Court injected a further subjective analysis. It held that even general church expressions "that warned of the potential and actual effects of alcohol consumption or other perceived social evils" if conducted during a referendum campaign could lead to investigation and prosecution if a registered voter or the Attorney General concluded that there was "any indication these activities were timed and intended to circumvent the requirements of the Act." (App. p. 16a).

The unconstitutional distinction contained in the Tennessee Supreme Court's interpretation of the Act increases the already existing difficulty for the appellants in determining which religious speech will invoke the Act's provisions and which will not.

> While a church may regard the conduct of certain functions as integral to its mission, [the state] may

> disagree. A religious organization therefore would have an incentive to characterize as religious only those activities about which there likely would be no dispute, even if it genuinely believed that [its religious mission included] performing other tasks as well. As a result, the [church's] process of self definition would be shaped in part by the prospects of litigation. A case-by-case analysis of all activities therefore would both produce excessive government entanglement with religion and create the danger of chilling religious acitvity.

Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. *Amos*, 55 U.S.L.W. 5005, 5010 (U.S., June 24, 1987) (Nos. 86-179, 86-401).

"In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960). "Broad prophylactic rules in the area of free expression are suspect. [citations omitted] Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP* v. *Button*, 371 U.S. 415, 438 (1963).

Including within the sweep of the Act's regulation speech under the circumstances presented here also presents a question under the Establishment Clause. The unnecessary regulation of churches pursuing religious objectives inhibits religion and fosters excessive entanglement between church and state. *NLRB* v.*Catholic Bishop of Chicago*, 440 U.S. 490 (1979).

III. Allowing The State To Prevail Without The Support Of Record Evidence Or Legislative Findings Presents A Substantial Question As To The Vitality Of The Strict Scrutiny Standard Of Review And The Proper Role Of Courts In Constitutional Adjudication.

Burdens upon First Amendment freedoms are subjected to strict scrutiny, and the state bears the burden of

proving the existence of a compelling interest which justifies a burden upon First Amendment freedoms. *Elrod* v. *Burns*, 427 U.S. 347, 362 (1976); *Hobbie* v. *Unemployment Appeals Commission of Florida*, ___ U.S. ___, 107 S.Ct. 1046, 1049 (1987). In *Hobbie*, this Court strongly reaffirmed the place of strict scrutiny in First Amendment adjudication, rejecting an opinion by Chief Justice Burger (joined only by Justice Powell and then Justice Rehnquist) in *Bowen* v. *Roy*, ___ U.S. ___, 106 S.Ct. 2147, 2153-58 (1986), suggesting that in some First Amendment cases a reasonable relationship test could be applied.

Without directly addressing the issue, this Court has required actual evidence of the compelling nature of the state interest asserted. In *Bellotti*, the Court said that the state's arguments did not merit consideration because they were unsupported by record or legislative findings, 435 U.S. at 789. In *Citizens Against Rent Control*, three justices pointed out that the result in that case was compelled by the lack of evidentiary support in the record for the city's position. 454 U.S. at 302 (Marshall, J., concurring) and 303 (Blackmun, J., and O'Connor, J., concurring). Justice O'Connor pointed out in her opinion in *Bowen* v. *Roy* that this Court has always required more than "vague allegations . . . wholly unsubstantiated by the record." 106 S.Ct. at 2168 (O'Connor, J., concurring in part and dissenting in part).

In this case, the State of Tennessee introduced no evidence in the record to support its assertions. Further, the legislative history of the Act contains no findings or discussion of the need for disclosure by non-political organization, particularly churches or the need to apply it in referenda. (*See* Appendix pp. 58a-60a).

Although the Tennessee Supreme Court purported to subject the law challenged to strict scrutiny, the bulwark

provided to First Amendment freedoms by this standard was severely undermined by a finding of constitutionality despite the absence of any record evidence or legislative findings. The governmental interest that is asserted to override fundamental freedoms should be susceptible to concrete factual demonstration, a point not lost on the Court of Appeals below. (App. 28a).

For the court to accept the assertions of the state without any supporting evidence distorts the proper role of the court in constitutional adjudication. The court in effect makes its own "legislative" judgment without the benefit of any factfinding process. The distortion of the judiciary's role in this case was compounded when the Tennessee Supreme Court recognized a compelling interest that was never asserted by the state before that court or the lower courts.[7] The *post hoc* justification offered by the court cannot satisfy the requirement that legislation abridging speech be narrowly drafted to achieve a substantial governmental interest. *Regan* v. *Time, Inc.*, 468 U.S. 641, 688 n. 27 (1984) (Brennan, J., concurring in part and dissenting in part). Such advocacy by the court on behalf of the Act deprives citizens of an impartial forum in which to vindicate their most fundamental rights.

This Court has never addressed the issue of whether or not the state may ever prevail when defending a law subjected to strict scrutiny without offering any evidence or citing any legislative findings. The absence of guidance in this area has not gone unnoticed by other courts. *See, Sheridan Road Baptist Church* v. *Department of Education*, 426 Mich. 462, 492 (1986) (Opinion by Boyle), *cert.*

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[7] The Tennessee Supreme Court held that the Act furthered the compelling state interest of preventing fraudulent fundraising (Slip Op. at 14; App. p. 12a. Such a state interest is not found in the legislative history and was not asserted by the state at any point during this litigation.

denied, 55 U.S.L.W. 3775 (U.S. May 18, 1987) (No. 86-1650). This question has substantial implications for the continued vitality of the strict scrutiny standard as a guardian of fundamental freedoms.

CONCLUSION

For the foregoing reasons appellants request that the Court note probable jursidiction and grant a plenary hearing.

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APPENDIX

IN THE SUPREME COURT OF TENNESSEE AT JACKSON

MADISON EQUITY
S/C NO. 8

BEMIS PENTECOSTAL CHURCH, CALVARY BAPTIST CHURCH, ENGLEWOOD BAPTIST CHURCH, FIRST ASSEMBLY OF GOD, FIRST BAPTIST CHURCH OF BEMIS, FIRST BAPTIST CHURCH OF JACKSON, MALESUS BAPTIST CHURCH, NORTH JACKSON BAPTIST CHURCH, NORTHSIDE ASSEMBLY OF GOD, POPLAR HEIGHTS BAPTIST CHURCH, SKYLINE CHURCH OF CHRIST, WEST JACKSON BAPTIST CHURCH, AND WOODLAND BAPTIST CHURCH
Plaintiffs-Appellees,

v.

STATE OF TENNESSEE, MICHAEL CODY, the Attorney General of the State of Tennessee, JERRY WOODALL, District Attorney of the Twelfth Judicial Circuit of the State of Tennessee, and DAVID COLLINS, State Election Coordinator of the State of Tennessee
Defendants-Appellants.

Hon. Joe C. Morris, Chancellor

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Judgment of Court of Appeals Reversed; Judgment of Trial Court Reinstated.

DROWOTA, J.

This case presents a constitutional challenge to the Campaign Financial Disclosure Act of 1980, T.C.A. §§2-10-101, *et seq.* (the Act). The Plaintiffs, thirteen churches in the Jackson area,[1] brought this declaratory judgment action in the Chancery Court of Madison County, alleging that the Act violated their First and Fourteenth Amendment rights under the Constitution of the United States. Defendants are the State of Tennessee, the State Attorney General, the District Attorney General for the Twelfth Judicial Circuit, and the Election Coordinator of the State of Tennessee.

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[1] Bemis Pentecostal Church, Calvary Baptist Church, Englewood Baptist Church, First Assembly of God, First Baptist Church of Bemis, First Baptist Church of Jackson, Malesus Baptist Church, North Jackson Baptist Church, Northside Assembly of God, Popular Heights Baptist Church, Skyline Church of Christ, West Jackson Baptist Church, and Woodland Baptist Church.

I.

In August, 1984, the City of Jackson held a local option referendum to determine whether liquor-by-the-drink would be approved by the residents of the city pursuant to T.C.A. § 57-4-103. Prior to the referendum, Plaintiffs participated in a campaign to oppose the adoption of on-premises liquor consumption in Jackson. They purchased radio, television, and newspaper advertisements expressly opposing the adoption of the local liquor option. At least one of the Plaintiffs contributed money to a political campaign committee, Citizens Against Drug Abuse, which actively campaigned to defeat the local option proposal; another contributed $100 to the Madison-Chester Association of Baptists for the purchase of advertising expressing opposition to the local option measure. Concurrently, a number of the Plaintiffs, as part of their regular and continuing program of broadcasts of their religious services, broadcast sermons in which opposition to the referendum was expressed. Church newsletters regularly published and distributed by Plaintiffs to their members and other interested individuals included expressions of opposition to the adoption of the local option. The total amount contributed and spent by all Plaintiffs to defeat the referendum measure was $5,150. No church filed a disclosure statement as required by the terms of the Act. Before the election scheduled for August 2, 1984, Defendant David Collins, the Election Coordinator of the State, received an anonymous letter concerning the legality of a newspaper advertisement placed in a local newspaper by one of the Plaintiffs. This advertisement urged voters to cast their ballots against the local option, identified the sponsoring church, and offered to provide transportation to the polls on election day. Because a local election was involved, Mr. Collins forwarded a copy of the letter and advertisement to the local District Attorney General, Jerry Woodall, for any appropriate action. On August 9, 1984, General Woodall, requested a formal opinion from the State Attorney General's Office, submitting the question of whether a church that donates funds to a group organized to defeat a local liquor measure must comply

with the Campaign Financial Disclosure Act. On August 29, 1984, the Attorney General issued his opinion that such a church would be required to file a disclosure statement with the county election commission. The following day, General Woodall notified Plaintiffs that they must comply with the Act by September 17, 1984. On September 10, 1984, Plaintiffs filed this declaratory judgment action pursuant to T.C.A. § 29-14-101, *et seq.*, and Rule 57, T.R.C.P. They sought a temporary injunction to prevent enforcement of the Act pending the outcome of this litigation. An Agreed Order was entered on September 13, 1984, in which the Defendants agreed that the failure of the Plaintiffs to file certain statements and disclosure reports as required by the Act would not be considered as a willful violation of the Act[2] for a period not to exceed thirty days after the final disposition of the case on appeal. Subsequently, the case was heard on August 7, 1985, in Madison County Chancery Court.

In addition to the testimony of the ministers and pastors of several of the Plaintiff-churches, a Stipulation of Facts was submitted as part of the evidence at trial. Plaintiffs also called a number of prominent expert witnesses to testify in the area of church-state relations. Among the stipulations were included the facts that each church has two or more members in its congregation and that the local option had been defeated by a vote of 6,514 to 6,474.

Testimony at trial primarily focused on the motives and activities of the Plaintiffs in opposing the adoption of the local liquor option. Much of the testimony concerned the sources, amounts, purpose, and frequency of expenditures to defeat the measure. In several instances the money used to purchase media advertisements had been appropriated from the general treasury funds of the churches; in other instances, special

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[2] The Act contains penalty provisions. T.C.A. § 2-10-110(a) provides for a fine not to exceed $1,000.00 and (c) provides that "any person who willfully violates" the Act is guilty of a misdemeanor.

collections had been taken specifically for campaign expenditures or contributions. Church organization was discussed to the extent necessary to show how spending decisions had been made. We emphasize that several Plaintiffs purchased media advertisements in which they specifically expressed their opposition to the local option and encouraged voters to reject the adoption of liquor-by-the-drink in Jackson and that these activities were in addition to the television and radio broadcasts of their church services or the distribution of their newsletters.

Following the August 2, 1984, referendum concerning liquor-by-the-drink, a second referendum was held in November, 1984, to determine whether package liquor stores would continue to operate in Jackson. Because of the ongoing controversy in this case, several of these churches refrained from participating in the November referendum campaign. Evidence also showed that none of these churches had endorsed or otherwise participated in any candidate elections to support or oppose particular candidates. They were active in liquor campaigns because, while they did not view candidate campaigns as appropriate matters for church involvement (especially in view of the diversity of political persuasions among the individual members of each congregation), liquor referenda involve moral issues on which the churches' congregations are generally unified and about which the churches have defined positions opposing the consumption of alcohol on theological grounds.

Of the ministers and pastors who testified for Plaintiffs, each objected to his church being labeled as a political campaign committee for any purpose because they believe that public questions such as liquor referenda are primarily moral and not political issues. Plaintiffs' expert witnesses provided additional reasons for this objection and for the general opposition of the churches to the disclosure requirements of the Act; they also offered testimony concerning government regulation of religious activities.

On October 30, 1985, Chancellor Morris issued his Memorandum Opinion. He found from the record that the terms of the Act applied to the activities of these Plaintiffs during the referendum campaign. He determined that any group that participated in elections in Tennessee by receiving contributions or by making expenditures over the minimum statutory amounts specifically to oppose or support a candidate or measure was required to disclose this information under the Act, concluding that such a requirement was not unconstitutional for any reason. The Final Order was entered on November 26, 1985, and on the same day Plaintiffs filed their Notice of Appeal. The Court of Appeals reversed the judgment of the Chancery Court in a split decision. The majority held that the Act burdened free speech and, absent any compelling state interest, was thus unconstitutional as applied to referenda elections. In his dissent, Judge Crawford argued that the informational purpose of the Act and the State's interest in deterring corruption or its appearance were sufficiently compelling to justify a simple and narrowly applicable disclosure requirement, pointing out that the United States Supreme Court decisions on which the majority relied dealt with limitations or prohibitions on contributions, not with a disclosure requirement like that of the Act. He also noted that the liquor industry is one of the most heavily regulated and controversial areas of Tennessee society, astutely observing that the majority's result would ironically permit large sums of money to be spent by groups who would profit from maintaining a dry county and that these Plaintiffs could unwittingly find themselves in an unholy alliance with these adverse interests with whom they have no moral common cause—but without realizing it because none of the referendum campaign participants would be required to disclose financial support of a particular result in a referendum.[3] The dissent found no constitutional

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[3] Plaintiffs would probably want to know if liquor industry interests were spending significant funds in a local option referendum to support the very outcome that they oppose; with that information they could effectively determine when and how much money should be spent to counter their opponents' arguments.

objections to a simple disclosure requirement such as that imposed by this statute. We agree with Judge Crawford and reverse the judgment of the Court of Appeals.

II.

A.

The authority of the Tennessee Legislature to control the conduct of elections held in this State is manifest. *See Trotter* v. *City of Maryville*, 191 Tenn. 510, 235 S.W.2d 13 (1950). The Tennessee Constitution provides that "[t]he General Assembly shall have power to enact . . . laws to secure the freedom of elections and the purity of the ballot box." Art. IV, § 1, Tennessee Constitution. Article I, § 5, of our Constitution further provides that the elections in this State "shall be free and equal," and Article XI, § 10, encourages internal improvements in the State. Moreover, the effective exercise of the right to vote is essential to the continued existence of democratic institutions. That the right to vote is individual and fundamental is not only recognized in the Tennessee Constitution, but the Constitution of the United States contains not less than four amendments preserving and protecting this right. *See* Amendments Fifteen, Nineteen, Twenty-four, and Twenty-six, Constitution of the United States. Article IV, § 4, of the Federal Constitution assures the States a republican form of government, placing the exercise of the right to vote at the foundation of our system of government. The informed exercise of that right by every qualified individual enhances the integrity of and public confidence in the government.

Pursuant to its general powers over the conduct of elections, Title Two of the Tennessee Code was enacted. T.C.A. § 2-1-102 provides that the purpose of Title Two

> "is to regulate the conduct of all elections by the people so that: (1) the freedom and purity of the ballot is secured; (2) Voters are required to vote in the election precincts in which they reside except as otherwise expressly permitted; (3) Internal improvement is promoted by providing a comprehensive and uniform procedure for elections; and (4) Maximum participation by all citizens in the electoral process is encouraged."

Title Two controls "[a]ll elections for public office, for candidacy for public office, and on questions submitted to the people . . . ." T.C.A. § 2-1-103. A "question" is defined in T.C.A. § 2-1-104(a)(21) as "a statement of a constitutional amendment or any other proposition submitted to the vote of the people . . . ." *Cf.* T.C.A. § 2-10-102(7). T.C.A. § 2-3-204 controls the time and place for elections on questions. In other provisions of the Tennessee Code, referenda are authorized for submission of questions directly to the people.[4] *See, e.g.*, T.C.A. §§ 5-1-209, 5-3-104, 7-2-106, 7-2-107, 43-14-209, 43-14-219, 44-19-105, 57-3-106, and 57-1-103. Recently, the Legislature authorized local option referenda on horse racing as well. A perusal of these statutes reveals that these are generally important questions for localities that directly affect the quality of life, the availability of revenues, and the conduct of local economies.

In the context of the essential place occupied by the electoral process in our society, the Legislature enacted the Campaign Financial Disclosure Act of 1980, T.C.A. §§ 2-10-101, *et seq.* The record in this case includes a transcript of the floor debate over the passage of the Act.[5] This legislative history reveals that the Act was passed to simplify and displace similar legislation enacted in 1975 by reducing the number of officials subject to the Act, by limiting the application of the Act's disclosure requirements, and by making filing, accounting, and compliance procedures less burdensome. The Act as currently written is less cumbersome than the previous campaign dis-

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[4] Article XI, § 9, Tennessee Constitution, directly authorizes municipalities to submit the question of home rule to the voters of the municipality.

[5] Legislative Journal, 1980 Tenn. Public Acts, Ch. 861, §§ 1 through 14; Senate Debates, Senate Bill 1143 (Senate Tapes 53, 54, 60, 61, 101, 127; taped February 28, 1980, March 5, 1980, March 27, 1980, and April 18, 1980), and House Debates, House Bill 945 (House Tapes 64, 87, 91, 92, 103, 149; taped April 4, 1979, March 24, 1980, and April 19, 1980), 91st General Assembly.

closure statute. Although concerned primarily with candidate elections, the Legislature did intentionally retain those provisions of the Act applicable to funds used to support or oppose a referendum question. In particular, the recent growth of standing political action committees was of concern to the Legislature. *Cf.* T.C.A. § 2-10-102(8). Moreover, T.C.A. § 2-10-102(10) was drafted to encompass any combination of two or more persons within the meaning of a "political campaign committee" to insure that every group participating in a particular election to attempt to affect the voting outcome could not avoid the disclosure requirements. The General Assembly clearly intended that referenda campaigns would be included in the disclosure requirements of the Act.

No significant dispute exists in this case that, as written, the Act applies to the Plaintiffs. Under T.C.A. § 2-10-102(10), these churches are combinations of two or more individuals making expenditures to support or oppose a measure, § 2-10-102(10)(A), or are organizations making expenditures to support or oppose a measure, § 2-10-102(10)(B), or are associations or other groups of persons that receive contributions or make expenditures to support or oppose any measure during a calendar quarter in an aggregate amount exceeding two hundred fifty dollars ($250), § 2-10-102(10)(C). In addition, T.C.A. § 2-10-102(7) defines a measure as "any proposal submitted to the people of the entire state, or any political subdivision of the state for their approval or rejection at an election . . . ." Apparently, all of the Plaintiffs received or made contributions or made expenditures within the meaning of T.C.A. §§ 2-10-102(3), (5) to influence the outcome of the vote in the local liquor referendum; thus, for the narrow purposes of the Act, these churches constitute political campaign committees.[6] Consequently, T.C.A. § 2-10-105 is triggered.

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[6] The ultimate content of Plaintiffs' disclosure statements is not determined by this opinion; we decide only whether the Act may apply to these Plaintiffs without violating their free speech rights.

Under T.C.A. § 2-10-105, the Plaintiffs are required to file disclosure statements with the county election commission. T.C.A. § 2-10-105(b). The name and address of a political treasurer must be certified by each Plaintiff and all records used to complete the disclosure statements must be retained pursuant to T.C.A. §§ 2-10-105(e), (f). T.C.A. § 2-10-107 establishes the content of the required statements. This section provides that a disclosure statement for a political campaign committee that has not spent over $1,000 or received over $1,000 in contributions may file a disclosure statement showing these simple facts without elaboration. T.C.A. § 2-10-107(a)(1). If the contributions received or the expenditures made by a political campaign committee, as defined for the purposes of the Act, exceed $1,000, then the committee must file a more detailed or itemized statement as required by T.C.A. § 2-10-107(a)(2). In this regard, we note that on this record many of these Plaintiffs appear to have contributed, received, or spent no more than $1,000 to influence the August, 1984, referendum outcome and thus would be subject only to the minimum disclosure requirements of T.C.A. § 2-10-107(a)(1). The Act does not impose stringent organizational requirements for compliance and these consist primarily of certification of a political treasurer, an address, periodic disclosure filings, and notarization of verification signatures. None of these requirements would impose any duties on the Plaintiffs that could not be readily performed within the churches' present organizations.

B.

On appeal, Plaintiffs have raised a number of constitutional issues, but in the context of the application of the Act to referenda, we think that the sole determinative issue is whether the Act violates the free speech clause of the First Amendment to the Constitution of the United States. We find it unnecessary to address the other issues to resolve this case. *Cf. Heffron* v. *International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 653, 101 S.Ct. 2559, (1981) (Religious and non-religious organizations enjoy equal rights "to enter a pub-

lic forum and spread their views . . ."). In the circumstances of this case and especially in view of the broad holding of the Court of Appeals, invalidating the Act as unconstitutional as applied to all groups in all referenda elections, Plaintiffs stand or fall on the free speech issue. We also observe here that, although the referendum about which this case originally arose is over, the case is not moot because the situation is very likely to be repeated when other referenda are held in this State.

C.

The standard of review for this case is strict scrutiny. The nature of the right, to free speech, is fundamental. The exercise of this right is at the core of the political process within which the Act applies and out of which this case arose. Free association rights under the First Amendment are also implicated but rest upon the same grounds as Plaintiffs' free speech rights in this case. The United States Supreme Court has made it clear "that regulation of First Amendment rights is always subject to exacting judicial review." *Citizens Against Rent Control* v. *City of Berkeley*, 454 U.S. 290, 294, 102 S.Ct. 434, 436 (1981). Under this standard of review, the State must demonstrate that the burden placed on free speech rights is justified by a compelling State interest. The least intrusive means must be utilized by the State to achieve its goals and the means chosen must bear a substantial relation to the interest being served by the statute in question.

Considering that the results of a referendum often entail enduring and significant changes in community life and that diverse interests compete to influence the public policy of the State at every level of political action, the public has the right to know at a minimum how campaigns on public issues are financed and by whom. Large undisclosed contributions can distort public sensibilities and allow confidence in the electoral system to wane as the perception waxes that elections can be unduly influenced by wealthy special interests and well-financed factions. The Legislature has determined that disclosure is a sufficient remedy for the effects of the con-

centration of wealth on elections and has refrained from imposing any limitations on contributions and spending by any group, relying on an informed electorate to decide the appropriate response to the competing arguments presented in the course of a campaign. The Alaska Supreme Court, construing that State's campaign disclosure act, observed that

> "[t]he need for an informed electorate applies with full force to ballot issues. Such issues are often complex and difficult to understand. Proper evaluation of the arguments made on either side can often be assisted by knowing who is backing each position. We have long recognized in court proceedings the importance of revealing to the decisionmaker the biases and motives of witnesses . . . . Similarly, a ballot issue is often of great importance financially to its proponents or opponents, or both, and multimillion dollar advertising campaigns have been waged. In such circumstances the voter may wish to cast his ballot in accordance with his approval, or disapproval, of the sources of financial support."

Messerli v. *State*, 626 P.2d 81, 87 (Alaska 1980).

That the State's interest is compelling is shown by the State's Constitutional provisions protecting the integrity and fairness of the political process. Moreover, assuring public avenues for disseminating information to protect the electoral process furthers the public interest in open government. The availability of such information not only underwrites the reliability of election results as a reflection of popular will, but it also preserves the integrity of the system by deterring corruption and the appearance of corruption. Disclosure assures contributors that their money has been spent in the manner for which it was solicited or for which it was donated. Prevention of fraudulent fund-raising or of funding of campaign activity by front organizations is made more feasible, justifying disclosure both of contributions and expenditures as two sides of the same coin. Records-keeping and routine disclosure further these State interests by preserving a paper trail by which the conversion of contributions into legitimate expenditures may be traced. One need only recall the infamous Watergate slush fund to recog-

nize the necessity of such records and of periodic disclosure requirements.

The recent history of campaign financial abuses as well as the growth and possible dominance of special interest political action committees make the State's disclosure requirements necessary to allow the public to have some gauge by which to assess the sources, content, and frequency of campaign publicity and activity. The informational purpose of disclosure is no less compelling in referenda. Referenda are the most direct expression of popular will and should be conducted in an open forum for the debate of public policy. Unlike candidate elections, which recur periodically to provide the electorate the opportunity to oust unpopular or corrupt public officials, referenda often commit the State or its political subdivisions to what may be, as a practical matter, essentially irreversible and costly courses of action. Vigorous, free, well-informed, and public debate can only be enhanced by disclosure of campaign financing in both referenda and candidate elections. No faction with access to substantial financial resources should be able to distort the process by flooding the forum with media campaigns without at least disclosing this fact to the voters. Any group that wishes to participate in the process through the financing of election outcome specific advocacy should reveal the extent of this financial involvement to the public. This is all that the people of Tennessee have asked of groups directly participating in an election campaign through the mechanism of the Campaign Financial Disclosure Act.

The United States Supreme Court has apparently approved the kind of simple disclosure requirements imposed by Tennessee's Act. In *Buckley* v. *Valeo*, 424 U.S. 1, 96 S.Ct. 619 (1976) *(Per curiam)*, which dealt with the constitutionality of the Federal Election Campaign Act, the Supreme Court stated that a narrowly construed disclosure requirement is generally within constitutional bounds. 424 U.S. at 61, 96 S.Ct. at 654. Noting the long history of Federal disclosure laws, 424 U.S. at 61-62, 96 S.Ct. at 654-655, the Court determined that "disclosure requirements, as a general matter, directly serve sub-

stantial government interests. In determining whether these interests are sufficient to justify the requirements we must look to the extent of the burden that they place on individual rights." 424 U.S. at 68, 96 S.Ct. at 658. We observe here that the Supreme Court upheld the Federal disclosure requirements in *Buckley,* 424 U.S. at 84, 96 S.Ct. at 666, although it did note that such requirements could infringe on privacy of association, 424 U.S. at 64-65, 96 S.Ct. at 656.[7]

Tennessee's Act imposes a system of graduated disclosure requirements that depend on the degree of financial involvement in the campaign and the nature of the office or activity. Under T.C.A. § 2-10-101(b), the Act does not even apply to certain offices and sets a floor amount at which application of the Act is triggered in a number of situations. T.C.A. § 2-10-102(10)(C) permits clubs, committees, associations, or other groups not otherwise covered by the Act to receive or spend the aggregate of $250 per calendar quarter to attempt to influence an election outcome without being defined as a political campaign committee. In this case, Plaintiffs appear to have made expenditures and made or received contributions in excess of this amount and thus would not be exempt under this provision.[8] Moreover, two types of disclosure statements are permitted by the Act. T.C.A. § 2-10-107(a)(1) requires only minimal disclosure if contributions received or made and expenditures do not exceed $1,000. Other provisions of the Act allow a certain amount of leeway in its application. *See* T.C.A. §§ 2-10-102(2), (3).

Furthermore, the Act does not apply to financing of generalized discussion of public issues and is triggered only when a

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[7] This infringement on privacy of association arises when the State compels disclosure by unpopular minority factions whose members could suffer adverse consequences from public exposure, but that is not a danger in this case, which involves mainstream groups such as these churches. *Cf. NAACP* v. *Alabama,* 357 U.S. 449, 78 S.Ct. 1163 (1958).

[8] See footnote 6, *supra.*

group is financing election outcome specific advocacy in a particular campaign. This construction of the Act is consistent with the express advocacy requirement of *Buckley:*

> "*Buckley* adopted the 'express advocacy' requirement to distinguish discussion of issues and candidates from more pointed exhortations to vote for particular persons [or referenda results]. We therefore concluded in that case that a finding of 'express advocacy' depended upon the use of language such as 'vote for', 'elect', 'support', etc. *Buckley, supra,* [424 U.S.], at 44, n.52, 96 S.Ct., at 646, n.52."

Federal Election Commission v. *Massachusetts Citizens for Life, Inc.*, ___ U.S. ___, 107 S.Ct. 616, 623 (1986). In *Massachusetts Citizens for Life,* the Supreme Court again expressly approved simple disclosure requirements as sufficient to serve the State's interest in monitoring campaign financing activities. 107 S.CT. at 630. In this regard, the Supreme Court found in *Buckley* that disclosure requirements appeared generally "to be the least restrictive means of curbing the evils of campaign ignorance and corruption . . . ." 424 U.S. at 68, 96 S.Ct. at 658.

Plaintiffs' regular and continuing programs of broadcasting their religious services on radio or television or of publishing and distributing church newsletters are not and cannot be considered campaign contributions or expenditures,[9] regardless of whether they advocate a particular election result or not in the course of such activities, as these activities are protected by the First Amendment and are expressely excluded from the operation of the Act under T.C.A. § 2-10-102(3)(B). Only the financing of their direct participation in the campaign, through activities in which plaintiffs would not otherwise have engaged but for an impending election, trigger the Act. Ongoing or standing political campaign committees, however, would be encompassed under either T.C.A. § 2-10-102(8) or T.C.A. § 2-10-102(10)(C), but the predomi-

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[9] The Attorney General stipulated at trial that the Act would not be applicable to these activities.

nantly religious activities of Plaintiffs are not within the scope of the Act and would not result in Plaintiffs being considered political campaign committees for any purpose under the Act. If Plaintiffs published advertisements or other forms of general expression that warned of the potential and actual effects of alcohol consumption or other perceived social evils, outside the context of an election campaign or even during a campaign but without financing election outcome specific advocacy, then such activities would not fall within the Act, absent any indication these activities were timed and intended to circumvent the requirements of the Act.[10] Nevertheless, that Plaintiffs in this case contributed and spent funds directly to influence the result of the vote in this referendum is undisputed in this case; such activity as that shown on this record can only be considered financing of election outcome specific advocacy.

While *Buckley* involved the Federal Election Campaign Act, a more complex statutory scheme than that of the Tennessee Act, *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 98 S.Ct. 1407 (1978), does appear to be somewhat more instructive because it involved State regulation of referenda campaigns; however, in *Bellotti*, Massachusetts had imposed direct limits on speech and did not simply require financial disclosure. The statute in that case completely prohibited expenditures by banks and corporations to influence certain referenda, in effect silencing them. The Tennessee Act does not impose any direct or indirect limitations on contributions or expenditures. In the course of invalidating this Massachusetts statute as an unconstitutional infringement on free speech, the Court again seems to have implicitly approved the kind of simple disclosure requirements found in the Tennessee Act. 435 U.S. at 792, n.32, 98 S.Ct. at 1424, n.32. Although finding that referenda campaigns do not entail the same degree of State interest in deterring corruption as is involved in candidate elections, the Court did recognize that the interests of the government in preserving the integrity of the electoral process is of the high-

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[10] See footnote 2, *supra*.

est importance but was not sufficient to jusitfy a *complete prohibition* on speech such as that imposed by Massachusetts in referenda campaigns. 435 U.S. at 795, 98 S.Ct. at 1426. Thus, despite the fact that *Bellotti* does involve referenda, it does not address the disclosure issue presented by this case.

More relevant to the case *sub judice* seems to be *Citizens Against Rent Control* v. *City of Berkeley, supra*, but again the Supreme Court was confronted with whether State limitations on contributions in referenda campaigns were constitutional under the First Amendment's free speech clause. In *Citizens Against Rent Control*, the Court more explicitly approved simple disclosure as "a sufficient prophylaxis to dispel perceptions of corruption" in the initiative process. 454 U.S. at 294, 102 S.Ct. at 436. Simple disclosure appears to have been sanctioned elsewhere in this case as well. 454 U.S. at 298-300, 102 S.Ct. at 438-439. In the context of a referendum, the Court remarked specifically:

> "Whatever may be the state interest or degree of that interest in regulating and limiting contributions to or expenditures of a candidate or a candidate's committee there is no significant state or public interest in curtailing debate and discussion of a ballot measure. Placing limits on contributions which in turn limit expenditures plainly impairs freedom of expression. The integrity of the political system will be adequately protected if contributions are identified in a public filing revealing the amounts contributed; if it is thought wise legislation can outlaw anonymous contributions."

454 U.S. at 299-300, 102 S.Ct. at 439. *Cf. State* v. *Acey*, 633 S.W.2d 306 (Tenn. 1982) (Construing T.C.A. § 2-19-120, which prohibits anonymous publications about candidates).

From these cases, none of which involves the issue as it is presented in this case, we conclude that the United States Supreme Court has implicitly—if not explicitly—countenanced the constitutionality of simple disclosure requirements such as those imposed by the Tennessee Act. In the course of invalidating the financial limitations in *Buckley, Bellotti*, and

Citizens Against Rent Control (the latter two of which involve State regulation of referenda campaigns), the Court has repeatedly intimated that simple disclosure imposed by a narrowly construed statute does not violate the free speech clause as a general matter, at least absent some indication that the disclosure would threaten the existence of an association or result in retaliations against the members of a group. We are convinced that the Act as drafted and construed does not violate the free speech clause of the First Amendment to the Constitution of the United States.

III.

As enacted, the Campaign Financial Disclosure Act does not and cannot control the quality or content of speech; it does not limit contributions or expenditures made during a campaign; it is neutral in all respects as regards the groups to whom it applies and the types of activities at which it is specifically aimed. The burden placed on election campaign participants is graduated according to the degree of financial involvement and the nature of the office; it does not and cannot interfere with generalized debate or discussion of public issues. The Act is triggered only by pointed attempts to influence the outcome of particular elections by financial participation in the campaign (i.e., financing of election outcome specific advocacy). The Act serves a number of legitimate and compelling State interests ranging from the maintenance of free, open, and fair elections, to dissemination of campaign information to voters, to prevention of corruption and fraud, to records-keeping to permit effective enforcement of the Act. The organizational burdens imposed by the Act are minimal, extending only slightly beyond the necessity to appoint or designate a political treasurer, if any, serving in Plaintiffs' churches. The burden of records-keeping is certainly no greater than that already imposed by other State and Federal laws with which churches must comply. As construed, the Act is a narrow disclosure requirement that is less burdensome than the more extensive Federal counterparts that have been at least partially upheld by the United States Supreme Court.

If any group wishes to engage in financing outcome specific election campaigning, whether involving a candidate election or referendum, the people of the State—including these Plaintiffs—have the right to know the exent of such financial involvement during the campaign in order to maintain a balanced and informed view of the campaign. For each qualified person to exercise an informed vote in a fair, open, and public election process is a compelling state interest for any republican form of government and this interest is expressly provided for in our State Constitution. Effective and meaningful democratic processes ultimately depend on the integrity and reliability of election results. Accordingly, we conclude that the Campaign Financial Disclosure Act of 1980 is constitutional in every respect. Its narrow application serves to enable the informed exercise of the fundamental right to vote in referenda and candidate elections.

The judgment of the Court of Appeals is reversed and that of the trial court is reinstated. The costs are divided equally among the parties.

/s/Frank F. Drowota, III
FRANK F. DROWATA, III, Justice

Concur:

Brock, C.J.
Fones, Harbison and Cooper, JJ.

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

MADISON EQUITY NO. 8

BEMIS PENTECOSTAL CHURCH, CALVARY BAPTIST CHURCH, ENGLEWOOD BAPTIST CHURCH, FIRST ASSEMBLY OF GOD, FIRST BAPTIST CHURCH OF BEMIS, FIRST BAPTIST CHURCH OF JACKSON, MALESUS BAPTIST CHURCH, NORTH JACKSON BAPTIST CHURCH, NORTHSIDE ASSEMBLY OF GOD, POPLAR HEIGHTS BAPTIST CHURCH, SKYLINE CHURCH OF CHRIST, WEST JACKSON BAPTIST CHURCH, AND WOODLAND BAPTIST CHURCH, suing on behalf of themselves and other churches or similarly situated religious organizations in Tennessee

Plaintiffs-Appellants,

vs.

STATE OF TENNESSEE, MICHAEL CODY, the Attorney General of the State of Tennessee, JERRY WOODALL, District Attorney of the Twelfth Judicial Circuit of the State of Tennessee, DAVID COLLINS, State Election Coordinator of the State of Tennessee

Defendants-Appellees.

FILED
Aug. 21, 1986

From the Chancery Court of Madison County, Tennessee at Jackson, Honorable Joe C. Morris, Chancellor

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OPINION FILED: AUG 21 1986

REVERSED AND REMANDED FARMER, J.

CRAWFORD, J.: (Dissents)

HIGHERS, J.: (Concurs)

This case concerns a declaratory judgment action in which the plaintiffs, churches organized and practicing their religion in Madison County, seek to have TCA § 2-10-101 *et seq* declared unconstitutional as applied to the plaintiffs. The plaintiffs also filed a motion for temporary injunction enjoining the defendants from prosecuting or indicting the plaintiffs for failure to comply with the Campaign Financial Disclosure Act, TCA § 2-10-101 *et seq*. On September 13, 1984 an agreed order was entered in which the defendants agreed that the failure of the plaintiffs to file certain reporting and disclosure reports as required by the Campaign Financial Disclosure Act of 1980 would not be considered as a willful violation of said Act for a period not to exceed thirty days after the expiration of any appeal period available to the plaintiffs in the course of the proceedings then pending before the trial court. This matter was heard before the trial court on August 7, 1985. The trial court issued an opinion on October 30, 1985 affirming the constitutionality of the Campaign Financial Disclosure Act of 1980 as applied to the plaintiffs and dismissing the plaintiffs' complaint. Final order was entered on November 26, 1985. The plaintiffs filed notice of appeal on November 26, 1985.

On August 2, 1984 a referendum was held in the city of Jackson, Tennessee on the question of whether to allow liquor

by the drink to be sold within the city limits of Jackson. Prior to the election, each plaintiff church contributed sums of money, totaling approximately $5,150.00, for defeat of the referendum to a political campaign committee knows as "Citizens Against Drugs and Alcohol", or purchased advertisements opposing the referendum in the local newspaper, *The Jackson Sun*. However, none of the churches filed a campaign financial statement pursuant to TCA § 2-10-101 *et seq*. All of the churches have two or more individuals in their congregation. The referendum was defeated by a vote of 6,514 against and 6,474 in favor.

Before the election, defendant David Collins, State Coordinator of Elections for the State of Tennessee; received in the mail an anonymous letter questioning the legality of an advertisement by the West Jackson Baptist Church opposing the referendum which apparently appeared in *The Jackson Sun* prior to the election. Mr. Collins referred this matter to Jerry Woodall, the District Attorney General for Madison County, Tennessee. After receiving an opinion from the Attorney General of the State of Tennessee, Attorney General Woodall, on August 30, 1984, notified the plaintiff churches that they would have to comply with the provisions of TCA § 2-10-101 *et seq* by filing a post-campaign financial statement by September 17, 1984, as required by TCA § 2-10-109(d). On September 10, 1984, the plaintiff churches filed the suit which is now before this Court on appeal.

First we must determine whether the plaintiff churches are clearly political campaign committees within the meaning of TCA § 2-10-102(10). In construing the meaning of "political campaign committees" we are restricted to the natural and ordinary meaning of the language used by the Legislature in the statute.

> determination of the issue before us is controlled by the most basic and fundamental rule of statutory construction. It has been expressed in many ways over the years but has always conveyed the principal that the courts are restricted to the natural and ordinary meaning of the language used by the Legislature within the four

> corners of the statute, unless an ambiguity requires resort elsewhere to ascertain legislative intent.

Austin v. *Memphis Pub. Co.*, 655 S.W.2d 146, 148 (Tenn. 1983). In applying the above rule of statutory construction we must examine TCA § 2-10-102(10).

> (10) "Political campaign committee" means:
>
> (A) A combination of two (2) or more individuals, including any political party governing body, whether state or local, making expenditures, except as provided for in subdivision (3) of this section, to support or oppose any candidate for public office or measure, but shall not include a voter registration program;
>
> (B) Any corporation or any other organization making expenditures, except as provided for in subdivision (3) of this section, to support or oppose a measure; or
>
> (C) Any committee, club, association or other group of persons which receives contributions or makes expenditures to support or oppose any candidate for public office or measure during a calendar quarter in an aggregate amount exceeding two hundred fifty dollars ($250);

TCA § 2-10-102(3) relates to the definition of contribution and the plaintiff churches do not fall within any of the exceptions provided for therein.

In applying the meaning of political campaign committees defined in TCA § 2-10-102(10) we are in agreement that plaintiff churches are political campaign committees within the meaning of the statute. The plaintiff churches fall within each of the definitions of political campaign committee. First, there is no doubt that the words "a combination of two or more individuals . . . making expenditures . . . to support or oppose any measure . . ." including a church with two or more members making expenditures to oppose a liquor by the drink referendum. Second, the plaintiff churches are clearly "organization[s] making expenditures . . . to support or oppose a measure . . ." Third, any of the plaintiff churches making a contribution of more than $250 to defeat the liquor by the drink

referendum are undoubtedly a "group of persons which receives contributions or makes expenditures to support or oppose any . . . measure during a calendar quarter in an aggregate amount exceeding two hundred fifty dollars ($250)." Thus we find that the plaintiff churches are political campaign committees within the meaning of TCA § 2-10-102(10).

The next issue presented for our review is whether the Campaign Financial Dislosure Act, TCA § 2-10-101 *et seq*, violates the free speech clause of the First Amendment of the United States Consitution applicable to the State through the 14th Amendment.

The First Amendment protection against laws abridging the freedom of speech was held applicable to the states by way of the due process clause of the 14th Amendment of the United States Constitution. *Grosjean* v. *American Press Company*, 297 U.S. 233, 56 S. Ct. 444, 80 L. Ed. 660 (1936). The constitutionality of the Campaign Financial Disclosure Act depends upon whether it can survive the exacting scrutiny necessitated by state-imposed restrictions of freedom of speech. *First Nat. Bank of Boston* v. *Bellotti*, 435 U.S. 765, 98 S. Ct. 1407, 55 L.Ed.2d 707 (1978). The State may prevail only upon showing a subordinating interest which is compelling. *Bates* v. *City of Little Rock*, 361 U.S. 516, 524, 80 S. Ct. 412, 417, 4 L.Ed.2d 480, 486 (1960). In order for the subordinating interest of the State to survive the exacting scrutiny there must be a "relevant correlation" or "substantial relation" between the governmental interest and the information required to be disclosed. *Buckley* v. *Valeo*, 424 U.S. 1, 64, 96 S.Ct. 612, 656, 46 L.Ed.2d 659, 713 (1976).

The State in its brief sets forth two compelling reasons for the information it seeks to have disclosed. The first is to provide the electorate with information as to how a referendum election is financed. The second is the deterrence of actual corruption and the appearance of corruption of the referendum process. The State argues that these two reasons are a compelling State interest and draws an analogy to the governmental interest

sought to be vindicated by the disclosure requirements of the Federal Election Campaign Act of 1974 set out in *Buckley* at 66-67.

> The governmental interests sought to be vindicated by the disclosure requirements are of this magnitude. They fall into three categories. First, disclosure provides the electorate with information "as to where political campaign money comes from and how it is spent by the candidate" in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.
>
> Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return. And, as we recognized in *Burroughs* v. *United States*, 290 U.S., at 548, 54 S.Ct., at 291, Congress could reasonably conclude that full disclosure during an election campaign tends "to prevent the corrupt use of money to affect elections." In enacting these requirements it may have been mindful of Mr. Justice Brandeis' advice:
>
> "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."

424 U.S. at 66-67.

While these disclosure requirements were found to serve as [sic] substantial government interest in *Buckley*, we find this case to be distinguishable from *Buckley*. *Buckley* concerned the election of candidates and not a referendum election. The governmental interest sought to be vindicated in *Buckley*, on which the State relies, concerned the prevention of corruption

in a candidate election. The first governmental interest to be vindicated by disclosure in *Buckley* was to provide the electorate with information as to how political campaigns were financed in order to ". . . alert the voter to the interests to which the candidate is most likely to be responsive . . ." The second governmental interest was to require disclosure in order to prevent corruption. In support of this governmental interest the court said, "A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return." 424 U.S. at 67. We do not find these compelling interests to be present in a referendum election. The necessity for disclosure in order to see to which interest a candidate is most likely to be responsive is simply not present. The necessity for disclosure to prevent corruption and avoid the appearance of corruption has not been shown nor do we find the State's argument convincing.

> Nor are appellee's arguments inherently persuasive or supported by the precedents of this Court. Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections, *e.g.*, *United States* v. *United Automobile Workers*, *supra*; *United States* v. *CIO*, *supra*, simply is not present in a popular vote on a public issue.

First Nat. Bank of Boston v. *Bellotti*, 435 U.S. at 790, 98 S.Ct. 1407, 1423 55 L.Ed.2d 707, 726 (1978).

Since the risk of corruption is not present in a popular vote on a public issue such as a liquor by the drink referendum, we find that the State has not proved a compelling interested which is necessary to survive the exacting scrutiny required for state-imposed restrictions on freedom of speech. The State argues that the U.S. Supreme Court in *Citizens Against Rent Control* v. *City of Berkley*, [sic] 454 U.S. 290, 102 S.Ct. 434, 70 L.Ed.2d 492 (1981) held that compelled disclosure of campaign contribution and expenditures in referenda elections are justified by compelling state interest. Upon considering *Citizens*, we do not agree with the State that the court found a compelling state

interest to be present in a referendum election which would justify compelled disclosure of campaign contributions and expenditures. However, we understand the State's reliance on *Citizens* since the court stated in its dicta, "The integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed; if it is thought wise, legislation can outlaw anonymous contributions." 454 U.S. at 299, 300. But we do not see that *Citizens* applied an exacting scrutiny test to campaign disclosure requirements in a referendum election and found a compelling interest exists in the prevention of corruption in such an election. To the contrary, we find that the court stated that the risk of corruption was not present when it quoted *Bellotti*. "Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections [citations omitted] simply is not present in a popular vote on a public issue . . .". 454 U.S. at 298.

It should be noted that the Campaign Financial Disclosure Act contains definite infringements upon free speech. A political campaign committee must file with the Secretary of State a statement of all contributions received and all contributions made by or on behalf of such committee. TCA § 2-10-105. The Act contains a penalty provision for which a fine may be imposed.

> *Penalties.*—(a) Any candidate or political campaign committee who fails to file a statement required by this chapter or who files a statement that does not conform to the truth or to the requirements of this chapter, shall be fined an amount not to exceed one thousand dollars ($1,000).

TCA § 2-10-110(A). Also willful violations of the Campaign Financial Disclosure Act constitute a misdemeanor.

> (c) Any person who willfully violates the provisions of this chapter is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

TCA § 2-10-110(c). We believe that such infringement upon free speech must pass an exacting scrutiny test which requires the

State to prove a compelling interest and there must be a "substantial relation" between the government interest and the information required to be disclosed. *Bellotti, supra*, at 435 U.S. 786, *Buckley*, 424 U.S. at 64. In looking with exacting scrutiny at the above state-imposed restrictions of freedom of speech we do not find that the State has proven that that need for prevention of corruption is present and compelling in a liquor by the drink referendum in order to necessitate the restrictions on free speech imposed by the disclosure requirements of the Campaign Financial Disclosure Act, TCA § 2-10-101 *et seq*. We therefore hold that, as heretofore stated, the Act is inapplicable to appellants in a referendum election.

The appellants have raised other constitutional issues which, in light of the principle of judicial restraint, we deem not necessary to address in view in this decision.

The ruling of the trial court dismissing the complaint is reversed and the cause is remanded for any further proceedings consistent with this Opinion. The costs of this appeal are taxed to the State of Tennessee, for which execution may issue if necessary.

/s/Farmer, J.
FARMER, J.

/s/Highers, J.
HIGHERS, J. (Concurs)

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

MADISON EQUITY NO. 8

BEMIS PENTECOSTAL CHURCH, CALVARY BAPTIST CHURCH, ENGLEWOOD BAPTIST CHURCH, FIRST ASSEMBLY OF GOD, FIRST BAPTIST CHURCH OF BEMIS, FIRST BAPTIST CHURCH OF JACKSON, MALESUS BAPTIST CHURCH, NORTH JACKSON BAPTIST CHURCH, NORTHSIDE ASSEMBLY OF GOD, POPLAR HEIGHTS BAPTIST CHURCH, SKYLINE CHURCH OF CHRIST, WEST JACKSON BAPTIST CHURCH, AND WOODLAND BAPTIST CHURCH, suing on behalf of themselves and other churches or similarly situated religious organizations in Tennessee

Plaintiffs-Appellants,

vs.

STATE OF TENNESSEE, MICHAEL CODY, the Attorney General of the State of Tennessee, JERRY WOODALL, District Attorney of the Twelfth Judicial Circuit of the State of Tennessee, DAVID COLLINS, State Election Coordinator of the State of Tennessee

Defendants-Appellees.

FILED
Aug. 21, 1986

From the Chancery Court of Madison County, Tennessee at Jackson, Honorable Joe C. Morris, Chancellor

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DISSENTING OPINION CRAWFORD, J.

I must respectfully dissent from the majority opinion. I agree with the majority's conclusion that the plaintiff churches are political action campaign committees within the meaning of T.C.A. §2-10-102 (10) (1985). I disagree, however, with the majority's statement, "We therefore hold that . . . the act is inapplicable to appellants in a referendum election." In view of the holding that plaintiffs come within the purview of the act, I understand the majority's holding to be that the Act as applied to referendum elections is unconstitutional as violative of the First Amendment right of freedom of speech.

The majority discounts the state's argument that the electorate is entitled to information as to how a referendum election is financed and that furnishing the information could act as a deterrent to corruption, or the appearance of corruption, of the referendum process. The majority states that in a referendum election there is no necessity for disclosure in order to be aware of the candidate's responsiveness to contributions and that there is no risk of corruption in a popular vote on public issues, such as liquor by the drink. The majority places great reliance on *Buckley* v. *Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) and *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed2d 707 (1978). Both of these cases, however, involve absolute prohibitions on contributions by virtue of contribution limitations.

In *Citizens Against Rent Control* v. *City of Berkeley*, 454 U.S. 290, 102 S.Ct. 434, 70 L.Ed.2d 492 (1981), the constitu-

tionality of a city ordinance which placed a limitation of $250 on contributions to committees formed to support or oppose ballot measures was contested. The U.S. Supreme Court held that this limitation on the amount of contributions was unconstitutional since it failed to advance a legitimate governmental interest that would justify the infringement of First Amendment rights. However, in making this decision, the Court approved the requirement of disclosure by relying upon another section of the ordinance which required publication of lists of contributors in advance of the voting. The Court said:

> The integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed; if it is thought wise, legislation can outlaw anonymous contributions.

Id. at 91,11 S.Ct. at 15, 34 L.Ed. at 623. As our Supreme Court noted in *Motlow* v.*State*, 125 Tenn. 547, 145 S.W. 177 (1911):

> [N]o one can imagine a greater field of fraud than there is in the liquor trade. Adulterations are notorious. The subterfuges practiced in the effort to place intoxicating liquors unlawfully and surreptitiously on the market are without number.

Id. at 581, 145 S.W. at 186.

In the case at bar, the statute in question places no limitations on the amounts contributed; it simply requires disclosure. The statute does not restrict the right of persons to speak, but merely provides that they cannot speak from behind a mask. I see nothing unreasonable in requiring a full disclosure from those who willingly contribute sums of money in support of or against a cause listed on the ballot. In the case of liquor referenda the public should be afforded the information so that if a subsequent referendum is held on the same issue they would know of any special interest groups that are actively participating, for whatever reason. In the not too distant past, there were "dry" counties in this state and bootlegging was quite a large economic pursuit. In some dry counties you could obtain delivery service from bootleggers, although this was pro-

hibited in the counties that had legalized package stores. In those days of nondisclosure many dry counties remained dry referendum after referendum, much to the chagrin of those who declared that the churches and the bootleggars kept the county dry. The bootleggers certainly had a vital economic interest in having the county remain "dry" and without a requirement of full disclosure of contributions they could work toward the defeat of legalized liquor, and the other avid foe of alcoholic beverages—the churches—could unwittingly become allies of the corruptive elements. Such an inadverent alliance would now be frustrated by the utilization of the disclosure statute.

This member of the Court finds the plaintiffs' position somewhat anomalous. A disclosure requirement could prevent a special interest group or individual with ulterior motives from contributing sums of money to accomplish the end result. And yet, the plaintiffs who vehemently oppose the concept of liquor by the drink want to eliminate this safeguard by having it declared unconstitutional. Plaintiffs' objection seems to be the label—political action committee—that is placed on all of those that are required to register under the act.

In my opinion, any referendum dealing with the sale of liquor is fraught with the peril of special interests who would surreptitiously infiltrate legitimate financing sources. For that reason, the full disclosure requirement of the statute in question is reasonable and meets the constitutional criteria required. Although I am not addressing the plaintiffs' remaining issues because the majority did not undertake to do so, the statute appears to be constitutionally sound in all respects. I would affirm the trial court.

/s/Crawford, J.
CRAWFORD, J.

IN THE CHANCERY COURT OF
MADISON COUNTY, TENNESSEE

R.D. No. 36515

BEMIS PENTECOSTAL CHURCH, CALVARY BAPTIST CHURCH, ENGLEWOOD BAPTIST CHURCH, FIRST ASSEMBLY OF GOD, FIRST BAPTIST CHURCH OF BEMIS, FIRST BAPTIST CHURCH OF JACKSON, MALESUS BAPTIST CHURCH, NORTH JACKSON BAPTIST CHURCH, NORTHSIDE ASSEMBLY OF GOD, POPLAR HEIGHTS BAPTIST CHURCH, SKYLINE CHURCH OF CHRIST, WEST JACKSON BAPTIST CHURCH, AND WOODLAND BAPTIST CHURCH, suing on behalf of themselves and other churches or similarly situated religious organizations in Tennessee

Plaintiffs,

vs.

STATE OF TENNESSEE, MICHAEL CODY, the Attorney General of the State of Tennessee, JERRY WOODALL, District Attorney of the Twelfth Judicial Circuit of the State of Tennessee, DAVID COLLINS, State Election Coordinator of the State of Tennessee

Defendants.

FILED
Oct. 30, 1985

OPINION

This case came on to be heard on the following stipulation of facts:

1. On August 2, 1984, a referendum was held in the City of Jackson, Tennessee, on the question of whether to allow liquor-by-the-drink to be sold within the city limits of Jackson.

2. Prior to that election, each plaintiff church contributed sums of money, totaling approximately $5,150, for the defeat of the referendum to a political campaign committee known as

"Citizens Against Drugs and Alcohol," or purchased advertisements opposing the referendum in the local newspaper, *The Jackson Sun*. However, none of the churches filed a campaign financial statement pursuant to T.C.A. § 2-10-100 *et. seq*. All of the churches have two or more individuals in their congregations. The referendum was defeated by a vote of 6514 against, and 6474 in favor.

3. Before the election, the defendant, David Collins, State Coordinator of Elections for the State of Tennessee (Collins), received in the mail an anonymous letter questioning the legality of an advertisement by the West Jackson Baptist Church opposing the referendum which apparently appeared in *The Jackson Sun* prior to the election. A copy of the advertisement was made a part of this record.

4. In response Mr. Collins sent a letter with a copy of the advertisement to defendant Jerry Woodall, the District Attorney General for Madison County, Tennessee (Woodall). In part, Mr. Collins stated in his letter that it appeared to him that the "Church in question has violated the provisions of § 2-10-105, Tennessee Code Annotated, in failing to designate a political treasurer and thereafter to file the required campaign disclosure statements." Finally, Mr. Collins indicated in the letter that since the referendum was a local question he was referring the matter to General Woodall "for whatever action he deemed appropriate." A copy of Mr. Collins' letter was made a part of this record.

5. In response to Mr. Collins' letter, General Woodall requested the opinion of defendant, W.J. Michael Cody, the attorney for the State of Tennessee (Cody), on the following question:

> Must a church that contributes money to a group organized to defeat a local liquor referendum file a statement with the county election commission under the Campaign Financial Disclosure Act of 1980?

A copy of General Woodall's opinion request was made a part of this record.

6. On August 29, 1984, General Cody issued an opinion stating that "such a church must file a statement with the county election commissioner." A copy of the Attorney General's opinion was made a part of this record.

7. As a result of that opinion Attorney General Woodall, on August 30, 1984, notified the plaintiff churches that they would have to comply with the provisions of T.C.A. § 2-10-101 *et seq.* by filing a post-campaign financial disclosure statement by September 17, 1984 as required by T.C.A. § 2-10-109(b).

8. On September 10, 1984, the plaintiff churches filed suit in this Court requesting that the Campaign Financial Disclosure Act of 1980 (hereinafter "Act") be held inapplicable to them or in the alternative unconstitutional. An Agreed Order was entered on September 13, 1984, under which Woodall agreed not to prosecute the plaintiff churches for failure to file their disclosure statements until thirty (30) days after the final adjudication of this lawsuit.

Various prominent pastors representing the plaintiffs testified as to their opposition to the use of alcohol in general. Several nationally-known religious figures testified as to their opposition to statutes such as the 1980 Campaign Financial Disclosure Act of the State of Tennessee as being an infringement upon the freedom of religion.

The testimony of all witnesses for the plaintiff was very impressive, and this Court agrees that the churches and religious groups should and must state their positions publicly on moral, political, or other issues they consider right or wrong. If they fail to do so, the causes which they champion have no meaning.

The issue in this case is really very simple, the statutory interpretation of the Campaign Financial Disclosure Act of 1980, cited as § 2-10-101 through 2-10-111 Tenn. Code Ann., more particularly § 2-10-102(10), which reads as follows:

> (A) A combination of two or more individuals, including any political party governing body, whether state or local,

making expenditures, except as provided for in subdivision (3) of this section to support or oppose any candidate for public office or measure, but shall not include a voter registration program;

(B) Any corporation or any other organization making expenditures, except as provided for in subdivision (3) of this section, to support or oppose a measue; or

(C) Any committee, club, or association or other group of persons which receives contributions or makes expenditures to support or oppose any candidate for public office or measure during a calendar year in an aggregate amount exceeds $250.00.

Are the churches "political campaign committees" within the meaning of the above-quoted statute?

The statute is not ambiguous and one readily sees that "a combination of two or more individuals . . . making expenditures . . ." to support or oppose any candidate for private office or measure fall clearly within the meaning of the Act. See *Austin* v. *Memphis Publishing Company,* 655 S.W.2d 146 (Tenn. 1983):

> The determination of the issue before us is controlled by the most basic and fundamental rule of statutory construction. It has been expressed in many ways over the years but has always conveyed the principle that the courts are restricted to the natural and ordinary meaning of the language used by the legislature within the four corners of the statute, unless an ambiguity requires resort elsewhere to ascertain legislative intent.

The plaintiffs have introduced into evidence the legislative history of the Act, which does not specifically mention churches or church groups, but neither exempts them. The free speech clause of the First Amendment of the United States Constitution has not been violated by the requirement that churches file campaign disclosure statements. The plaintiff and the defendant have both cited *Buckley* v. *Valeo,* 424 U.SD. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), as controlling. See the following language in the *Buckley* case:

> The governmental interest sought to be vindicated by the disclosure requirements are of this magnitude. They fall into three (3) categories. First, disclosure provides the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate.' In order to aid the voters in evaluating those who seek federal office, it allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. Sources of candidates' financial report also alert the voter to the interest to which a candidate is most likely to be responsive and thus facilitate predictions on future performance in office.
>
> Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after an election . . .
>
> Third, and not least significant, record keeping, and reporting disclosure requirements are an essential means of fathering [sic] the data necessary to protect [sic] the violations of the contribution limitations described above.

It is imperative in the political time in which we live that complete financial disclosures to the public in elections are necessary, whether it be contributions to a candidate, tax referendums, liquor referendums, etc.

The Act does not require churches or other groups acting as committees to give the name and amount of each contribution, if it falls within the guidelines of the Act. This again was the plain language of the *Buckley* decision:

> The expenditures limitations contained in the Act represent substantial rather than mere theoretical restraints on the quantity and diversity of political speech. . . .
>
> By contrast with a limitation upon expenditures for political expression, a limitation on the amount that any one person or group may contribute to a candidate or a political committee entails a marginal restriction upon the contributor's ability to engage in free communication. . . .

It is contended that the Act as applied to churches, violates the free exercise clause of the First Amendment of the Constitution of the United States. Once a church group or any other group, which falls within the meaning of the Act endeavors to enter the political arena or electoral process, then that group or congregation must abide by the election laws of the State of Tennessee, and in this case disclose the information required by the Act. As has been stated earlier in this opinion, church groups should and must speak out on the various issues in our society, and more particularly in their opposition to the spread of liquor, pornography, or other vices that surround us.

A fundamental principle of fair play is obvious in discussing the various issues in this case. It appears that the Act is drafted to give equal and fair treatment to all groups and organizations participating in elections in this state.

Has the establishment clause of the First amendment of the Constitution of the United States been violated by the Act?

It is obvious in our society that there cannnot be and there never has been a complete and total separation of church and state. The inscription on our currency, the opening of courts in certain jurisdictions, the expressed thoughts of our founding fathers in the declaration of independence, and the United States Constitution clearly reveal that this nation was soundly founded on religious and fair principles which, if adhered to, the nation will survive. See *Lynch* v. *Donnelly*, 104 S.Ct. 1355 at 1359, 79 L.Ed.2d 604 (1984): "No significant segment of our society and no institution within it can exist in a vacuum or in a total or absolute isolation from all other parts, much less from government."

This Court does not hold itself out to be or pretend to be a theologian, but it appears that in the 12th chapter of St. Mark, verses 12-17, and the 20th chapter of St. Luke, verses 20-25, that certain politicians attempted to involve Jesus Christ in a religious dispute by asking Him if it was right to pay taxes to Caesar. Very obviously, if Jesus said "no", that would be contrary to the Roman rule of government at the time and put Him in a bad light with Rome, which the poiticians wanted. If He

said "yes", that would put Him in a very bad position with His own people who were being ruled by the hated Roman dictatorship. In answer to this question in Mark, "Is it lawful to give tribute to Caesar?", Jesus answered by saying, "Render to Caesar the things that are Caesar's and to God the things that are God's." This scripture applies somewhat in the instant case, with the Act being deemed as Caesar, the Act must be complied with until overruled by the legislature.

Is the Act overbroad?

In their brief, the plaintiffs cited *New York Civil Liberties Union* v. *Acito*, 459 F.Supp. 75, 88-90 (S.D. N.Y. 1978), in which a New York election law definition of political committee was construed to be overbroad, where each contributor to the New York Civil Liberties Union had to be listed and the amount of his contribution disclosed. This is clearly not the case in the State of Tennessee, as indicated by a reading of the Act according to the principals cited in *Austin* v. *Memphis Publishing Company, supra.*

Has the equal protection clause of the fourteenth Amendment of the United States been violated?

Certainly this is not true. A minister of the gospel, or proponent or opponent of a referendum, or political candidate, is free to say what he wants to, when he wants to, from the pulpit, over the radio, on television, or by newspaper editorial, unless they make campaign donations or advertise.

This Court respectfully affirms the constitutionality of the Campaign Financial Disclosure Law of 1980, and the plaintiff's complaint is dismissed.

Counsel shall prepare an Order accordingly.

This the 30th day of OCTOBER, 1985.

/s/Joe C. Morris
JOE C. MORRIS, Chancellor

TO THE CLERK & MASTER:
File this Opinion as part of the technical record in this cause, but same need not be copied on the Minutes of the Court.

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

MADISON EQUITY NO. 8
(No. 36515 Below)

BEMIS PENTECOSTAL CHURCH, CALVARY BAPTIST CHURCH, ENGLEWOOD BAPTIST CHURCH, FIRST ASSEMBLY OF GOD, FIRST BAPTIST CHURCH OF BEMIS, FIRST BAPTIST CHURCH OF JACKSON, MALESUS BAPTIST CHURCH, NORTH JACKSON BAPTIST CHURCH, NORTHSIDE ASSEMBLY OF GOD, POPLAR HEIGHTS BAPTIST CHURCH, SKYLINE CHURCH OF CHRIST, WEST JACKSON BAPTIST CHURCH, AND WOODLAND BAPTIST CHURCH, suing on behalf of themselves and other churches or similarly situated religious organizations in Tennessee

Plaintiffs-Appellants,

v.

STATE OF TENNESSEE, MICHAEL CODY, the Attorney General of the State of Tennessee, JERRY WOODALL, District Attorney of the Twelfth Judicial Circuit of the State of Tennessee, DAVID COLLINS, State Election Coordinator of the State of Tennessee

Defendants-Appellees.

FILED
May 26, 1987

JUDGMENT OF COURT OF APPEALS REVERSED; JUDGMENT OF TRAIL COURT REINSTATED.

JUDGMENT

This cause coming on to be heard upon the record from the Court of Appeals, Western Section at Jackson, application for permission to appeal having been heretofore granted, briefs and arguments of counsel; upon consideration whereof, this Court is of opinion that the judgment of the Court of Appeals should be reversed and the judgment of the trial court reins-

tated for the reasons set out in the opinion filed (a copy of which is attached hereto).

IT IS, THEREFORE, ORDERED AND ADJUDGED that the judgment of the Court of Appeals is reversed, and the judgment of the trial court is reinstated. This cause is remanded to the Chancery Court of Madison County for further proceedings not inconsistent with this Court's opinion, and for the collection of the costs of the Court below; for all of which let the mandate issue.

The costs are divided equally among the parties.

5/26/87.

TENNESSEE, WESTERN SECTION AT JACKSON

MADISON EQUITY NO. 8

BEMIS PENTECOSTAL CHURCH, CALVARY BAPTIST CHURCH, ENGLEWOOD BAPTIST CHURCH, FIRST ASSEMBLY OF GOD, FIRST BAPTIST CHURCH OF BEMIS, FIRST BAPTIST CHURCH OF JACKSON, MALESUS BAPTIST CHURCH, NORTH JACKSON BAPTIST CHURCH, NORTHSIDE ASSEMBLY OF GOD, POPLAR HEIGHTS BAPTIST CHURCH, SKYLINE CHURCH OF CHRIST, WEST JACKSON BAPTIST CHURCH, AND WOODLAND BAPTIST CHURCH, suing on behalf of themselves and other churches or similarly situated religious organizations in Tennessee

Plaintiffs-Appellants,

v.

STATE OF TENNESSEE, MICHAEL CODY, the Attorney General of the State of Tennessee, JERRY WOODALL, District Attorney of the Twelfth Judicial Circuit of the State of Tennessee, DAVID COLLINS, State Election Coordinator of the State of Tennessee

Defendants-Appellees.

FILED
Aug. 21, 1986

ORDER

This cause came on to be heard and considered by this Court on the record and for the reasons stated in this Court's Opinion, of even date, is it ORDERED:

1. The ruling of the trial court is reversed.

2. This cause is remanded to the Chancery Court of Madison, County for any further proceedings consistent with this Court's Opinion.

3. The costs of this appeal are adjudged to the State of Tennessee, for which execution may issue if necessary.

Enter: Aug. 21, 1986

/s/Farmer, J.
FARMER, J.

CRAWFORD, J.: Dissents

/s/Highers, J.
HIGHERS, J. (CONCURS)

IN THE CHANCERY COURT OF
MADISON COUNTY, TENNESSEE
AT JACKSON

No. 36515

BEMIS PENTECOSTAL CHURCH, et al.,
Plaintiffs,

v.

STATE OF TENNESSEE, et al.,
Defendants.

FINAL ORDER

This cause came on to be heard before the Honorable Joe C. Morris, Chancellor, on the 7th day of August, 1985, and after considering the stipulation of facts, the testimony of witnesses and the arguments of counsel it is hereby,

ORDERED that the plaintiffs' complaint against the defendants be dismissed.

Finally, it is ORDERED that costs in this cause are to be taxed against the plaintiffs.

ENTER this the 26th day of November, 1985.

/s/Joe C. Morris
JOE C. MORRIS, Chancellor

APPROVED FOR ENTRY

/s/Michael T. Tabor
MICHAEL T. TABOR, Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a true copy of the foregoing on J. Michael Cody, State Attorney General and Michael Catalano, Assistant Attorney General, 450 James Robertson Parkway, Nashville, Tennessee 37219 and James G. Woodall, District Attorney General, by prepaid U.S. Mail, this the 26th day of November, 1985.

/s/Michael T. Tabor
MICHAEL TABOR

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

MADISON EQUITY NO. 8
(No. 36515 Below)

BEMIS PENTECOSTAL CHURCH, CALVARY BAPTIST CHURCH, ENGLEWOOD BAPTIST CHURCH, FIRST ASSEMBLY OF GOD, FIRST BAPTIST CHURCH OF BEMIS, FIRST BAPTIST CHURCH OF JACKSON, MALESUS BAPTIST CHURCH, NORTH JACKSON BAPTIST CHURCH, NORTHSIDE ASSEMBLY OF GOD, POPLAR HEIGHTS BAPTIST CHURCH, SKYLINE CHURCH OF CHRIST, WEST JACKSON BAPTIST CHURCH, AND WOODLAND BAPTIST CHURCH, suing on behalf of themselves and other churches or similarly situated religious organizations in Tennessee

Plaintiffs-Appellants,

vs.

STATE OF TENNESSEE, MICHAEL CODY, the Attorney General of the State of Tennessee, JERRY WOODALL, District Attorney of the Twelfth Judicial Circuit of the State of Tennessee, and DAVID COLLINS, State Election Coordinator of the State of Tennessee

Defendants-Appellees.

FILED
Aug. 20, 1987

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that BEMIS PENTACOSTAL CHURCH, CALVARY BAPTIST CHURCH, ENGLEWOOD BAPTIST CHURCH, FIRST ASSEMBLY OF GOD, FIRST BAPTIST CHURCH OF BEMIS, FIRST BAPTIST CHURCH OF JACKSON, MALESUS BAPTIST CHURCH, NORTH JACKSON BAPTIST CHURCH, NORTHSIDE ASSEMBLY OF GOD, POPLAR HEIGHTS BAPTIST

CHURCH, SKYLINE CHURCH OF CHRIST, WEST JACKSON BAPTIST CHURCH, and WOODLAND BAPTIST CHURCH, suing on behalf of themselves and other churches or similarly situated religious organizations in Tennessee, the appellants above-named, hereby appeal to the Supreme Court of the United States from the Judgment of the Supreme Court of Tennessee at Jackson entered May 26, 1987 reversing the Judgment of the Tennessee Court of Appeals, Western Section at Jackson, and reinstaing the Judgment of the trial court.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Dated: August 20, 1987

/s/Lee Boothby
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Attorneys for Plaintiffs-Appellants

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

MADISON EQUITY NO. 8
(No. 36515 Below)

BEMIS PENTECOSTAL CHURCH, *et al.*, *Plaintiffs-Appellants*,

vs.

STATE OF TENNESSEE, *et al.*, *Defendants-Appellees*.

CERTIFICATE OF SERVICE

I hereby certify that all parties required to be served have been served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States. Service upon the following was made by hand delivery this 20th day of August, 1987:

Jewel Redden, Clerk
State of Tennessee Supreme Court
Tennessee Supreme Court at Jackson
Jackson, TN 38302

Service upon the following was made this 20th day of August, 1987, by United States First Class Mail, postage prepaid:

W. J. Michael Cody,
Attorney General and Reporter
Andy D. Bennett,
Deputy Attorney General
Michael Catalano
Deputy Attorney General
450 James Robertson Pkwy
Nashville, TN 37219

James G. Woodall
District Attorney General
P.O. Box 2825
Jackson, TN 38302

/s/Michael T. Tabor
MICHAEL T. TABOR
202 W. Baltimore
Jackson, TN 38301

IN THE CHANCERY COURT OF
MADISON COUNTY, TENNESSEE
AT JACKSON

R.D. No. 36515

BEMIS PENTECOSTAL CHURCH, CALVARY BAPTIST CHURCH, ENGLEWOOD BAPTIST CHURCH, FIRST ASSEMBLY OF GOD, FIRST BAPTIST CHURCH OF BEMIS, FIRST BAPTIST CHURCH OF JACKSON, MALESUS BAPTIST CHURCH, NORTH JACKSON BAPTIST CHURCH, NORTHSIDE ASSEMBLY OF GOD, POPLAR HEIGHTS BAPTIST CHURCH, SKYLINE CHURCH OF CHRIST, WEST JACKSON BAPTIST CHURCH, AND WOODLAND BAPTIST CHURCH, suing on behalf of themselves and other churches or similarly situated religious organizations in Tennessee

Plaintiffs,

vs.

STATE OF TENNESSEE, MICHAEL CODY, the Attorney General of the State of Tennessee, JERRY WOODALL, District Attorney of the Twelfth Judicial Circuit of the State of Tennessee, DAVID COLLINS, State Election Coordinator of the State of Tennessee

Defendants.

FILED
Sept. 10, 1984

COMPLAINT

Plaintiffs bring this action on behalf of themselves and other similarly situated pursuant to Rule 57 of the Tennessee Rules of Civil Procedure and Tenn. Code Ann. § 29-14-101 et seq., and would show unto the Court:

I.

That the plaintiffs are incorporated or unicorporated churches organized and practicing their religion in Madison County, Tennessee.

II.

The defendants are the State of Tennessee, Michael Cody, the Attorney General of the State of Tennessee, Jerry Woodhall, the District Attorney of the Twelfth Judicial Circuit of the State of Tennessee, and David Collins, the State Election Coordinator of the State of Tennessee, and are subject to the jurisdiction of this Court.

III.

This action is brought by the plaintiffs on their behalfs and on behalf of those similarly situated pursuant to Rule 23 of the Tennessee Rules of Civil Procedure. The class which the plaintiffs seek to represent includes all churches or religious organizations in the State of Tennessee which have been or may be affected by the enforcement of Tenn. Code Ann. § 2-10-101, et seq., known as the Campaign Financial Disclosure Act of 1980. This class is to [sic] numerous that joinder of all members of the class is impracticable; there are questions of law common to the class; the claims of the plaintiffs are typical of the claims of the class, and the plaintiffs will fairly and adequately protect the interests of the class.

IV.

The prosecution of separate actions by the individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, thereby establishing incompatable standards of conduct.

V.

That on August 2, 1984, a referendum was held in the City of Jackson, Tennessee on the question of whether to allow liquor by the drink within the city limits of Jackson. That prior to this referendum certain of the plaintiffs had contributed varying sums to an organization known as Citizens Against Drug Abuse for the purpose of defeating the liquor by the drink proposal and in some instances one or more of the plaintiffs purchased newspaper advertisements opposing liquor by the drink.

VI.

That on August 13, 1984, the defendant David Collins, State Election Coordinator, corresponded with the defendant Jerry Woodall, District Attorney of the Twelfth Judicial Circuit, alleging that one or more of the plaintiffs had violated Tenn. Code Ann. § 2-10-105 and § 2-10-102 (10) the later provision states in relevant part:

(10) "Political campaign committee" means:

(a) A combination of two (2) or more individuals, including any political party governing body, whether state or local, making expenditures, except as provided for in subdivision (3) of this section, to support or oppose any candidate for public office or measure, but shall not include a voter registration program;

(b) Any corporation or any other organization making expenditures, except as provided for in subdivision (3) of this section, to support or oppose a measure; or

(c) Any committee, club, association or other group of persons which receives contributions or makes expenditures to support or oppose any candidate for public office or measure during a calendar quarter in an aggregate amount exceeding two hundred fifty dollars ($250.00);

VII.

The defendant, Jerry Woodall, District Attorney General of the Twelfth Judicial Circuit, requested, and obtained, from the defendant, Michael Cody, the State Attorney General, an opinion on the following question: "Must a church that contributes money to a group organized to defeat a local liquor referendum file a statement with the County Election Commission under the Campaign Financial Disclosure Act of 1980?"

Subsequently on August 9, 1984, the defendant, Michael Cody, offered an opinion which stated that Plaintiffs were political campaign committees and should comply with the

Financial Disclosure Act of 1980, a copy of which is attached hereto and labeled Exhibit A.

VIII.

As a result of the affirmative opinion offered by the defendant, Attorney General Michael Cody, the defendant, District Attorney General Jerry Woodall, on August 30, 1984 by press release and letter as well as public statement notified the plaintiffs that they should comply with the provisions of Tenn. Code. § 2-10-101, *et seq.* or be subject to prosecution if their compliance did not occur within forty five (45) days.

Subsequently, the defendant District Attorney General notified the plaintiffs that the forty five (45) day period would expire September 17, 1984.

IX.

There is subsisting an actual controversy between the plaintiffs and the defendants on the interpretation of that part of Tenn. Code Ann. § 2-10-101, et seq.; specifically which defines a "political campaign committee" inasmuch as the intrepretation rendered by the defendant Attorney General's office is unreasonable and inconsistent with the intention of the legislature. Substantial rights are depending on an interpretation of this statutory provision. For the defendants to act in accordance with the interpretation expressed in the defendant Attorney General's opinion would be detrimental to the plaintiffs and those in said class and the plaintiffs would suffer irreparable harm. There is a justiciable controversy between the parties as to the opinion and the interpretation of that part of the statute which defines political campaign committees.

X.

That Tenn. Code Ann. § 2-10-101, the Campaign Financial Disclosure Act of 1980 violates the Constitution of the United States of America and the Constitution of the State of Tennessee in that the statute is repugnant to the due process

clause of the United States Constitution, and the due process clause of the Tennessee State Constitution. Article 1, § 8, because of its vagueness and indefiniteness in defining and placing on notice those organizations or groups which are to be characterized under the act as political campaign committees.

XI.

That Tenn. Code Ann. § 2-10-101, et seq. the Campaign Financial Disclosure Act of 1980 violates the First Amendment and the equal protection clause of the Fifth and Fourteenth Amendments of the Constitution of the United States, in that the imposition of filing and disclosure requirements on the plaintiffs constitutes an unconstitutional burden on the plaintiffs exercise of their religious beliefs.

That the Act further violates the First, Fifth and Fourteenth Amendments to the United States Constitution in that it abridges the Plaintiffs' freedom of speech, and said Act violates the establishment of religion clause of the First Amendment of the United States Constitution.

XII.

That Tenn. Code Ann. § 2-10-101 et seq., the Campaign Financial Disclosure Act of 1980 violates Article I, Section 3 of the Constitution of the State of Tennessee.

WHEREFORE, PLAINTIFFS PRAY:

1. To certify this action as a class action.

2. To issue a temporary injunction, as requested by Motion filed with this complaint after notice, enjoining the defendants, their agents, or successors and those acting in concert with them from enforcing the penal provisions of Tenn. Code Ann. § 2-10-101 et seq., the Campaign Financial Disclosure Act of 1980 pending a declaratory judgment by this Court.

3. That this Court enter a declaratory judgment declaring the rights and obligations of the parties hereto with respect to

the statute and the matters set forth in this complaint, and declare the Campaign Financial Disclosure Act of 1980 unconstitutional on the basis set forth herein.

4. To afford such other and further relief as may be just and proper under the circumstances.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE.

/s/Ivy E. Scarborough
IVY E. SCARBOROUGH
Attorney for Plaintiffs
203 East Main
Jackson, TN 38301

/s/Michael T. Tabor
MICHAEL T. TABOR
Attorney for Plaintiffs
202 West Baltimore
Jackson, TN 38301

COST BOND

We, the undersigned, are surety for the costs in this cause not to exceed $500.00

EXHIBIT 1

IN THE CHANCERY COURT OF
MADISON COUNTY, TENNESSEE
AT JACKSON

No. 36515

BEMIS PENTECOSTAL CHURCH, et al.,
Plaintiffs,

v.

STATE OF TENNESSEE, et al.,
Defendants.

FILED
Feb. 18, 1986

STIPULATION OF FACTS

The parities, as evidenced by the signatures of their counsel below, hereby stipulate to the following facts for purposes of the trial of this cause. The stipulation of these facts in no way prohibits either party from introducing additional evidence at the trial of this cause not in conflict with these stipuations.

1. On August 2, 1984, a referendum was held in the City of Jackson, Tennessee on the question of whether to allow liquor-by-the-drink to be sold within the city limits of Jackson.

2. Prior to that election, each plaintiff church contributed sums of money, totalling approximately $5,150, for the defeat of the referendum to a political campaign committee known as "Citizens Against Drug Abuse", or purchased advertisements opposing the referendum in the local newspaper, *The Jackson Sun*. However, none of the churches filed a campaign financial disclosure statement pursuant to T.C.A. § 2-10-101 *et seq*. All of the churches have two or more individuals in their congregation. The referendum was defeated by a vote of 6514 against and 6474 in favor.

3. Before the election, the defendant, David Collins, State Coordinator of Elections for the State of Tennessee (Collins), received in the mail an anonymous letter questioning the legality of an attached advertisement by the West Jackson Baptist Church opposing the referendum which apparently appeared in *The Jackson Sun* prior to the election. A Copy of the advertisement is attached to these Stipulations and marked Exhibit 1.

4. In response, Mr. Collins sent a letter with a copy of the advertisement to defendant, Jerry Woodall, the District Attorney General for Madison County, Tennessee (Woodall). In part, Mr. Collins stated in his letter that it appeared to him that the "church in question has violated the provisions of § 2-10-15, Tennessee Code Annotated, in failing to designate a political treasurer and thereafter to file the required campaign disclosure statements." Finally, Mr. Collins indicated in the letter that since the referendum was a local question he was referring the matter to General Woodall "for whatever action he deemed appropriate." A copy of Mr. Collins' letter is attached to these Stipulations and marked Exhibit 2.

5. In response to Mr. Collins' letter, General Woodall requested the opinion of defendant, W.J. Michael Cody, the Attorney for the State of Tennessee (Cody), on the following question:

> Must a church that contributes money to a group organized to defeat a local liquor referendum file a statement with the county election commission under the Campaign Financial Disclosure Act of 1980?

A copy of General Woodall's opinion request is attached to these Stipulations and marked Exhibit 3.

6. On August 29, 1984, General Cody issued an opinion stating that "such a church must file a statement with the county election commission." A copy of the Attorney General's opinion is attached to these Stipulations and marked Exhibit 4.

7. As a result of that opinion, General Woodall, on August 30, 1984, notified the plaintiff churches that they would have to comply with the provisions of T.C.A. § 2-10-101 *et seq.* by filing a post-campaign financial disclosure statement by September 17, 1984 as required by T.C.A. § 2-10-105, or be subject to prosecution under T.C.A. § 2-10-109(b).

8. On September 10, 1984, the plaintiff churches filed suit in this Court requesting that the Campaign Financial Disclosure Act of 1980 be held inapplicable to them or unconstitutional. An agreed order was entered on September 13, 1984 under which Woodall agreed not to prosecute the plaintiff churches for failure to file their disclosure statements until thirty days after the trial adjudication of this lawsuit.

9. Attached to these stipulations and marked as exhibit 5 is a true and exact copy of a campaign financial disclosure form.

/s/Michael W. Catalano
MICHAEL W. CATALANO
Assistant Attorney General

Attorney for Defendants

/s/Michael T. Tabor
MICHAEL T. TABOR
Attorney at Law

/s/Ivy E. Scarborough
IVY E. SCARBOROUGH
Attorney at Law

Attorneys for the Plaintiffs

* * *

EXHIBIT 7

SOUTHERN BAPTIST CONVENTION

OFFICE OF THE RECORDING SECRETARY

June 20, 1985

FILED
FEB 18 1986
JEWEL REDDEN, CLERK

Dr. John Lee Taylor
259 West Deaderick
Jackson, TN 38301

Dear Dr. Taylor:

In answer to your request, a copy of Resolution 8 adopted at the Southern Baptist Convention on June 13, 1985 is shown below. The official text was taken directly from the Convention Bulletin of that day. Prior to the time the resolution was officially adopted, a registration of messengers in excess of 45,000 had been reported by the registration secretary.

Resolution No. 8 —
On Government Treatment of Churches as Political Campaign Committees

WHEREAS, The attorney general of Tennessee has interpreted the Tennessee Campaign Financial Disclosure Act of 1980 (Tenn. Code Ann. Sec. 2-10-101) to mean that churches are political campaign committees (Political Action Committees) if they spend at least $250 in any quarter for or against any measure submitted to voters; and

WHEREAS, Public officials have ordered certain churches in Jackson, Tennessee, to file forms as political campaign committees because these churches contributed funds to oppose a liquor-by-the-drink proposal submitted to the voters; and

WHEREAS, These churches have opposed, and are opposing, such rulings as an infringement upon the churches' right to address moral concerns; and

WHEREAS, The Tennessee Baptist Convention adopted in 1984 a resolution supporting the churches and opposing the cited law; and

WHEREAS, The effects of the enforcement of the cited law would be to chill the free exercise of religion, to stifle religion's voice on moral issues in the public forum, and to draw churches into entangling subservience to government.

Be it therefore RESOLVED, That we, the messengers of the Southern Baptist Convention meeting in Dallas, June 11-13, 1985, register our alarm over any law that would require filing with the government when churches address moral and ethical issues in the public forum; and

Be it further RESOLVED, That we urge Southern Baptists to protest government rulings and oppose passage of laws which attempt to restrict Christian influence on public policy; and

Be it finally RESOLVED, That we urge churches to oppose any law that would classify churches as political campaign committees if they address such issues.

...t wishes as you continue ...ir fine ministry in Jackson.

Cordially,

Martin B. Bradley
Recording Secretary

BEST AVAILABLE COPY

EXHIBIT 10

TRANSCRIPTION FOR CHANCELLOR JOE C. MORRIS OF RECORDING ON HOUSE BILL 1923 AND SENATE BILL 2007, TAPED ON March 22, 1982

SPEAKER: Representative Martin.

MARTIN: Mr. Speaker, that has been clarified in the big amendment, and I move that you sir, that that amendment be withdrawn.

SPEAKER: The gentleman requests to withdraw the amendment without objection. Mr. Clerk, you so do it.

Now, the next amendment.

MURPHY: Mr. Speaker, the next amendment is about eight pages long, and I can either explain it or have it read.

SPEAKER: Ladies and gentlemen of the House, let's give, this amendment completely rewrites the Bill, completely, completely rewrites the Bill.

Let's give the gentleman your attention so that he can explain it, and let's take our seats, and let's cut down on the traffic. We have got a long day, a long afternoon. You are recognized, Representative Murphy.

MURPHY: Mr. Speaker, and members of the General Assembly, in front of you is a printout of how the Bill would appear, with this amendment if it is adopted.

We tried to take into consideration a number of Bills that have been before the ethics subcommittee, to try to make a Bill that would be workable, in terms of campaign disclosure. The important changes are that it would reduce dramatically the number of officials who must file, because it establishes a new test of who must file.

An official who does not earn more than $100.00, or be full-time, or he doesn't expend more than a $100.00 campaigning, would not have to file. The local officials will only have to file locally. The Attorney General can investigate only if a sworn

campaign—if a sworn complaint is filed. And, a candidate is disqualified only where there are willful violations.

We cut down the number of reporting days by saying that, you know, right now you have got to file it seems like every other month; but what we said is that you file one time before a primary, one time before a general, and one time after the general.

If there is an excess after that forty-eight days, after that last report, then, you would have to file only once a year; and right now, I think that you have to file every three months.

In addition to that, if you receive only $1,000.00 or less, you just disclose that you received less than $1,000.00; and you don't have to fill out any complicated forms.

In addition to that, we felt there were two other things that were very important, and that was when your records are inspected, that you be adequately notified, not only of the name of the person who was doing the inspecting; but who he or she represented and for whom they were inspecting it for.

We found that there was one loophole, that if they came up here to inspect your records in Nashville, you would get that notification, but that there was no requirement at the present time that if they went to your local filing, and inspected it there, you wouldn't get notified; and so, what we did, is to require the local people to notify you also, if your records were inspected in your own local district.

And, in an effort to take care of some outlying, from people who don't live here in Nashville, we felt that it was very difficult, since we could come up to the—up to this place, and file ourselves on the right day; and you would either have to come in, or make sure that your mail got in, what we said was that the filing date would be the postmark, if you sent it by registered mail; an that means that you could wait up until—and get it in by mail; and we felt that would make it a lot easier in terms of filing.

I believe that Representative Burnett has another amendment to this amendment, and so, pending any questions, I move you sir, a passage of or adoption

* * * *

SENATOR WHITE: No sir, it is one paragraph.

MR. CLERK: By deleting sub-section H of Section 3 in its entirety, and substituting instead the following: Political Campaign Committee means a combination of two or more individuals, including any political party, governing body, whether state or local making expenditures except as provided for in sub-section (c) of this Section, to support or oppose any candidate for public office or measure; but shall not include a voter registration program—

SENATOR WHITE: Mr. Clerk, stop right there. All he has read so far is just a restatement of what is already in that Bill; and the next section, and it just adds this Section: Any corporation or any other organization making expenditures, except as provided for in sub-section (C) of this Section, to support or oppose a measure.

The Law says that corporations can spend money not for candidates, but for issues, to promote an issue; and this would require corporations who do so, to report what they spent on that issue.

At the request of members of the committee, I added any other organizations, so that it would include unions, or any other organization, that spent money on an issue, and they would have to report it; and, I thought that was fair; and so, I move adoption of this amendment, which does that.

EXCERPTS FROM TRIAL TRANSCRIPTS

REV. BILLY JOHNSON RINGOLD, PASTOR OF PLAINTIFF SKYLINE CHURCH OF CHRIST

* * * *

[41] Q. Has Skyline Church of Christ ever supported or opposed a political candidate?

A. No sir.

Q. Why is that so?

A. We don't feel like it is our area of work to become involved in politics. We have people in our fellowship who are of all political persuasions; and, that would not be within our realm of activity to become involved in political issues.

* * * *

REV. MAURICE D. COLEMAN, PASTOR OF BAPTIST CHURCH OF WAVERLY, TENNESSEE

* * * *

[111] Q. How long have you been a Baptist minister?

A. Thirty-three years.

Q. Do you have any theological concern about your church declaring that it is a political campaign committee, and appointing a political treasurer?

A. It bothers me deeply. What we say to the Community when we register as a political action committee, is that we are no different than any other organization in the community; and we believe that the function of the church and religion in a community [112] is to maintain a separate role that is different, that speaks forth on a different level and a different message, and if we announce that we are going to be a political action committee today, and not tomorrow, then, I am not sure that the people would ever know when we are floating in and out of this; and when are we a church, and when aren't we.

Q. Let me ask you this. Do you consider the First Baptist Church of Waverly, Tennessee, to be a political campaign committee?

A. No sir.

Q. Did you consider it to be a political campaign committee in the 1960 and 1970 referendums?

A. No sir. And, I might add why. In the church, we tell a man, deny yourself, and we tell a man, that you are supposed to seek the advantage of your fellow man; and you are to constantly seek brotherhood over larger circles.

I don't know of a politician who ever ran in saying that you ought to vote for my opponent, or I am going to deny any advantage I have got whatsoever.

You see, we speak on a level that has to do with faith, and relationship to God, and this is why we can't enter into this other area.

* * * *

DR. THOMAS J. MADDEN, EXECUTIVE SECRETARY-TREASURER OF THE EXECUTIVE BOARD OF THE TENNESSEE BAPTIST CONVENTION

[118] Q. Now, did you have an occasion to become familiar with Attorney General Cody's opinion, which stated that churches must or should comply with the campaign financial disclosure act of 1980?

A. I head it very quickly from the Jackson area, yes sir.

Q. Do you recall approximately when you heard about his opinion?

A. I, you know—I—September, I would think, but I couldn't swear to it; but somewhere, in there, and I expect the day or the day after he gave it, I heard about it; and he knows when he gave it.

Q. So, that would have been in 1984, is that correct?

A. Yes sir.

Q. Are you aware of the effect his opinion has had on Baptist churches participating in local referendum in Tennessee?

A. Yes sir.

Q. Would you tell the Court the effect?

[119] A. I have had many calls, and also being stopped from time to time by pastors and I think that it was devastating, sir. Certainly, chilling and discouraging and intimidating; and they wanted to keep the law, and they wanted to fight liquor; but they didn't want to be called a political action committee; and so, I think it was.

Q. Is that based on your knowledge gotten from your position as Executive Director of the Tennessee Baptist Convention?

A. Yes sir, that is an opinion; and I am giving you my judgment. Yes sir.

* * * *

FOREST MONTGOMERY, COUNSEL FOR THE OFFICE OF PUBLIC AFFAIRS, NATIONAL ASSOCIATION OF EVANGELICALS

* * * *

[135] Q. Do you have an opinion as to the reaction of the evangelical religious community concerning any legislation which would require that a church, appoint a political treasurer, and determine that it is a political committee, should it speak out on any referendum situation, and expend over $250.00, on a moral or ethical issue?

A. Well, yes. I do have an opinion. We would definitely be opposed to that.

[136] Q. And, would that be on philosophical or theological grounds?

A. Well it would be on theological grounds, as indeed every action that we take is on theological grounds, as we understand God's word.

* * * *

DR. ROBERT L. MADDOX, EXECUTIVE DIRECTOR, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, ORDAINED SOUTHERN BAPTIST MINISTER AND FORMER SPECIAL ASSISTANT FOR RELIGIOUS LIAISON FOR PRESIDENT CARTER

* * * *

[174] Q. Based upon your understanding and knowledge of the broad religious community, that I have already recited to you, is it or do you have an opinion as to whether the religious community would find a provision in the law that required as a pre-condition for getting on the television or getting on the radio, or putting an ad in the paper, that one would have to declare that religious community to be a political committee; and appoint a political treasurer, do you have an opinion as to whether the religious community would be willing to accept that?

A. I think that they would unilaterally not accept it, and it would be repressive and vigorously opposed, in all manner of ways.

* * * *

DEAN M. KELLEY, DIRECTOR OF RELIGIOUS AND CIVIL LIBERTY, NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE USA

* * * *

[153] Q. Can you tell me if in fact the concept that a state has a right to require that a church declare itself as a political committee, and appoint a treasurer, if that gains coinage, what impact that you foresee that would have, or could have on related types of problems?

[154] A. Well, as I have indicated, I think that it would tend to put a perjorative label on activity that the churches considered to be part of their religious duty, and thereby would tend to chill or inhibit at least some church people from engaging in that type of religious duty, though not all.

* * * *

[158] Q. Do you have an opinion as to the reaction of the religious community that you are familiar with, concerning legislation or legislative provisions which would require a church to declare itself a political action committee, as to what the reaction of the religious community would be?

A. I think they would oppose it.

Q. And, would that be on theological or philosophical grounds, to your knowledge?

A. Theological grounds such as I mentioned earlier.

* * * *

ROBERT A. DESTRO, ASSISTANT PROFESSOR OF LAW, THE CATHOLIC UNIVERSITY OF AMERICA, MEMBER OF UNITED STATES COMMISSION ON CIVIL RIGHTS, AND FORMER GENERAL COUNSEL OF THE CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS

* * * *

[188]Q. Do you have an opinion as to whether those within the Catholic community that would be required [189] to execute such a document would do so without objection?

A. Oh, I think that they would have substantial objection to this.

Q. All right, does the Catholic Church, to your knowledge, speak out on moral and ethical issues?

A. All the time.

Q. And, when they do so, do you have an opinion as to whether they are doing that with a political hat or some other hat?

A. They consider themselves to be doing it purely with a theological hat on.

* * * *

[191] Q. Do you know of any Catholic Prelate that would be willing to sign a statement such as you have before you, appointing a political treasurer, and creating a political action committee, out of his parish, [192] or church, in order to speak out on the issue of abortion?

A. Not one.

Q. Based upon your discussions with the theologians and the prelates, would that be offensive because of a theological reason, or philosophical reason?

A. Well, it would be offensive to them for a theological reason. They don't—they consider themselves to be speaking out in matters of faith and morals; and the way the Catholic Church looks at this, is that they speak in their sphere and the government speaks in its; and you don't mix them up.

* * * *

[195] Q. What is the big deal? Filling out a form and filing it, and becoming a political action committee, and so what? What is the big deal?

Can you tell me, based on your experience and knowledge, what the big deal is?

A. Well, the big deal is that you are asking a group of people, who consider themselves to be religiously motivated to define themselves as something that they do not consider themselves to be. They consider themselves to be preachers and teachers, and evangelists. They do not consider themselves to be members of a political movement; and in fact, in the Catholic Church, the Pope has made it very clear that priests and nuns are not supposed to be involved in politics directly; and so, the question to them is that they are not going to want [196] to do this, because they are being asked to admit to being something that they don't consider themselves to be.

* * * *

CONSTITUTIONAL PROVISIONS

United States Constitution

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS

Tennessee Campaign Financial Disclosure Act of 1980

(Statute Both As It Was Worded In August 1984, And As It Currently Reads)

2-10-101. Short title—Application [Effective January 1, 1985].—(a) This chapter shall be known and may be cited as the "Campaign Financial Disclosure Act of 1980."

(b) The provisions of this chapter shall not apply to any candidate for public office for which the service is part-time and for which the compensation is less than one hundred dollars ($100) per month; provided, however, that this exemption shall not be applicable to any such candidate for a public office as a chief administrative officer or to any such candidate whose expenditures exceed five hundred dollars ($500).

(c) Any charter provisions of municipalities regarding campaign financial disclosures of candidates for public office shall apply to candidates for public office, except to the extent that such provisions are in conflict with the provisions of this chapter.

(d) The secretary of state shall administer the provisions of the Campaign Financial Disclosure Act of 1980 as provided in this chapter. [Acts 1980 (Adj. S.), ch. 861, § 2; 1982 (Adj. S.), ch. 689, § 11; 1984, ch. 683, §§ 1, 7.]

Compliler's Notes.

* * *

Subsection [d], effective until January 1, 1985, reads: "[d] The State Librarian and Archivist shall administer the provisions of the Campaign Financial Disclosure Act of 1980 as provided in this chapter. Any reports, statements or information received by the librarian as required by this title and chapter and which relate to a candidacy for a seat in the General Assembly shall be kept on file in the office of the clerk of the House or Senate, for whichever body the applicant is a candidate."

Amendments. The 1984 amendment in (d), substituted "secretary of state" for "State Librarian and Archivist" in the first sentence, and deleted the second sentence which read: "Any reports, statements or information received by the librarian as required by this title and chapter and which relate to a candidacy for a seat in the General Assembly shall be kept on file in the office of clerk of the House or Senate, for whichever body the applicant is a candidate."

2-10-102. Definitions [Effective January 1, 1985].—As used in this chapter, unless the context otherwise requires:

(1) "Attorney general" means the attorney general of the state of Tennessee.

(2) "Candidate" means an individual who has made a formal announcement of his candidacy or qualified under the law of this state to seek nomination for election or elections to public office, or has received contributions or made expenditures except for incidental expenditures to determine if one shall be a candidate, or has given his consent for a campaign committee to receive contributions or make expenditures with a view to bringing about his nomination for election or the election to state public office;

(3) "Contribution" means any advance, conveyance, deposit, distribution, transfer of funds, loan, loan guaranty, personal funds of a candidate, payment, gift, pledge or subscription, of money or like thing of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, made for the purpose of influencing a measure or nomination for election or the election of any person for public office. "Contribution" shall not be construed to include the following:

(A) Services including expenses provided without compensation by a candidate or individuals volunteering a portion or all of their time on behalf of a candidate or campaign committee;

(B) Any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper,

magazine, or other periodical publication, unless such facilities are owned wholly or in part or controlled by any political party, political committee or candidate;

(C) Nonpartisan activity designed to encourage individuals to register to vote or to vote;

(D) Any written, oral, or electronically transmitted communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to public office;

(E) The use of real or personal property and the cost of invitations, food, and beverages not exceeding one hundred dollars ($100), voluntarily provided on an individual's residential premises for candidate related activities; or

(F) Receipts and expenditures, including a reasonable amount for rent, by a state or county executive committee or primary board when performing the duties imposed upon them by law, provided that such receipts and expenditures are segregated from and maintained in a fund separate and apart from any funds used by the party as a political campaign committee, it being the legislative intent that if no separate fund is maintained, all receipts and expenditures of the committee or board shall be subject to the disclosure provisions of this chapter.

(4) "Election" means any general, special or primary election or run-off election, held to approve or disapprove a measure or nominate or elect a candidate for public office;

(5) "Expenditure" means a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing a measure or the nomination for election or election of any person to public office;

(6) "File" or "filed" means the date actually deposited with or received by the appropriate office or the date of the postmark if postmarked and sent by registered mail of the U.S. postal service;

(7) "Secretary of state" means the secretary of state of Tennessee or his designee.

(8) "Measure" means any proposal submitted to the people of the entire state, or any political subdivision of the state for their approval or rejection at an election, including any proposed law, act or part of an act of the general assembly, or revision of or amendment to the constitution;

(9) "Person" means an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons;

(10) "Political campaign committee" means:

(A) A combination of two (2) or more individuals, including any political party governing body, whether state or local, making expenditures, except as provided for in subdivision (3) of this section, to support or oppose any candidate for public office or measure, but shall not include a voter registration program;

(B) Any corporation or any other organization making expenditures, except as provided for in subdivision (3) of this section, to support or oppose a measure; or

(C) Any committee, club, association or other group of persons which receives contributions or makes expenditures to support or oppose any candidate for public office or measure during a calendar quarter in an aggregate amount exceeding two hundred fifty dollars ($250);

(11) "Public office" means any state public office or local public office filled by the voters, "State public office" means the offices of governor, public service commissioner, member of the general assembly, delegate to a Tennessee constitutional convention, district attorney general, and supreme court justice. "Local public office" means any state, county, municipal, school or other district or precinct officer or position including judges and chancellors that is filled by the voters, with the exception that "local public office" does not include any state public office as defined above.

(12) "Multicandidate political campaign committee" means a political campaign committee to support or oppose to (2) or more candidates for public office or two (2) or more measures. [Acts 1980 (Adj. S.), ch. 861, § 3; 1982 (Adj. S.), ch. 658, §§ 1-3; 1984, ch. 683, §§ 5, 7.]

Compiler's Note. The provisions of this section as effective until January 1, 1985, read: "As used in this chapter, unless the context otherwise requires:

"(1) 'Attorney general' means the attorney general of the state of Tennessee.

"(2) 'Candidate' means an individual who has made a formal announcement of his candidacy or qualified under the law of this state to seek nomination for election or elections to public office, or has received contributions or made expenditures except for incidental expenditures to determine if one shall be a candidate, or has given his consent for a campaign committee to receive contributions or make expenditures with a view to bringing about his nomination for election or the election to state public office;

"(3) 'Contribution' means any advance, conveyance, deposit, distribution, transfer of funds, loan, loan guaranty, personal funds of a candidate, payment, gift, pledge or subscription, of money or like thing of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, made for the purpose of influencing a measure or nomination for election or the election of any person for public office. "Contribution" shall not be construed to include the following:

"(A) Services including expenses provided without compensation by a candidate or individuals volunteering a portion or all of their time on behalf of a candidate or campaign committee;

"(B) Any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned wholly or in part or con-

trolled by any political party, political committee or candidate;

"(C) Nonpartisan activity designed to encourage individuals to register to vote or to vote;

"(D) Any written, oral, or electronically transmitted communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to public office;

"(E) The use of real or personal property and the cost of invitations, food, and beverages not exceeding one hundred dollars ($100), voluntarily provided on an individual's residential premises for candidate related activities; or

"(F) Receipts and expenditures, including a reasonable amount for rent, by a state or county executive committee or primary board when performing the duties imposed upon them by law, provided that such receipts and expenditures are segregated from and maintained in a fund separate and apart from any funds used by the party as a political campaign committee, it being the legislative intent that if no separate fund is maintained, all receipts and expenditures of the committee or board shall be subject to the disclosure provisions of this chapter.

"(4) 'Election' means any general, special or primary election or run-off election, held to approve or disapprove a measure or nominate or elect a candidate for public office;

"(5) 'Expenditure' means a purchase payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing a measure or the nomination for election or election of any person to public office;

"(6) 'File' or 'filed' means the date actually deposited with or received by the appropriate office or the date of the postmark if postmarked and sent by registered mail of the U.S. postal service;

"(7) 'Librarian' means the state librarian and archivist;

"(8) 'Measure' means any proposal submitted to the people of the entire state, or any political subdivsion of the state for their approval or rejection at an election, including any proposed law, act or part of an act of the general assembly, or revision of or amendment to the constitution;

"(9) 'Person' means an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons;

"(10) 'Political campaign committee' means:

"(A) A combination of two (2) or more individuals, including any political party governing body, whether state or local, making expenditures, except as provided for in subdivision (3) of this section, to support or oppose any candidate for public office or measure, but shall not include a voter registration program.

"(B) Any corporation or any other organization making expenditures, except as provided for in subdivision (3) of this section, to support or oppose a measure; or

"(C) Any committee, club, association or other group of persons which receives contributions or makes expenditures to support or oppose any candidate for public office or measure during a calendar quarter in an aggregate amount exceeding two hundred fifty dollars ($250);

"(11) 'Public office' means any state public office or local public office filled by the voters. "State public office" means the offices of governor, public service commissioner, member of the general assembly, delegate to a Tennessee constitutional convention, district attorney general, and supreme court justice. "Local public office" means any state, county, municipal, school or other district or precinct office or position including judges and chancellors that is filled by the voters, with the exception that "local public office" does not include any state public office as defined above."

For repeal of the former section, see compiler's notes under § 2-10-101.

Amendments. The 1984 amendment substituted the present provisions in (7) for those set out in the accompanying compiler's note; added (12); and substituted "secretary of state" for "librarian" or "state librarian and archivist" throughout the section.

2-10-103. Duties—Secretary of state—State and county election commission—Attorney general and reporter [Effective January 1, 1985].—(a) It shall be the duty of the secretary of state:

(1) To prescribe forms for statements and other information required to be filed by this chapter and to make such forms available through the county election commissions to persons required to file such statements and information;

(2) To accept and file any information voluntarily supplied that exceeds the requirements of this chapter;

(3) To develop a filing, coding, and cross-indexing system consonant with the purposes of this chapter;

(4) To make statements and other information filed with it available for public inspection and copying during regular office hours, and to make copying facilities available at a charge not to exceed actual cost;

(5) To preserve such statements and other information for a period of five (5) years from date of receipt;

(6) To seek from the attorney general, issue, and publish, upon proper request from any qualified candidate or public official, advisory opinions upon the requirements of this chapter;

(7) To promulgate any rules and regulations as may be appropriate for the administration of this chapter, provided such rules and regulations shall be adopted as provided for in the "Uniform Administrative Procedures Act," § 4-5-101, et seq.

(8) To notify all candidates for state public office in a state election of the requirements for filing any statement required by this chapter seven (7) days before any deadline provided.

(b) It shall be the duty of each county election commission:

(1) To accept and file any information filed pursuant to the requirements of this chapter and information voluntarily supplied that exceeds the requirements of this chapter;

(2) To make statements and other information filed with it available for public inspection and copying during regular office hours at reasonable expense;

(3) To preserve such statements and other information for a period of five (5) years from date of receipt;

(4) To notify all candidates for local public office in a local election of the requirements for filing any statement required by this chapter seven (7) days before any deadline provided for herein.

(c) It shall be the duty of the state election commission to furnish the name and address of any candidate for statewide public office and the language of any measure submitted to the people of the entire state to the secretary of state.

(d) it shall be the duty of the attorney general and reporter to advise county election commissions, primary boards and registrars-at-large of their duties and responsibilities required by this chapter. [Acts 1980 (Adj. S.), ch. 861 § 4; 1984 ch. 683 §§ 2, 7.]

Compiler's Notes. The provisions of this section as effective until January 1, 1985, read: "(a) It shall be the duty of the librarian:

"(1) To prescribe forms for statements and other information required to be filed by this chapter and to make such forms available through the county election commissions to persons required to file such statements and information;

"(2) To accept and file any information voluntarily supplied that exceeds the requirements of this chapter;

"(3) To develop a filing, coding, and cross-indexing system consonant with the purposes of this chapter;

"(4) To make statements and other information filed with it available for public inspection and copying during regular office hours, and to make copying facilities available at a charge not to exceed actual costs;

"(5) To preserve such statements and other information for a period of five (5) years from date of receipt;

"(6) To seek from the attorney general, issue, and publish, upon proper request from any qualified candidate or public official, advisory opinions upon the requirements of this chapter;

"(7) To promulgate any rules and regulations as may be appropriate for the administration of this chapter, provided such rules and regulations shall be adopted as provided for in the "Uniform Administrative Procedures Act," § 4-5-101, et seq.

"(8) To notify all candidates for state public office and all political campaign committees in a state election of the requirements for filing any statement required by this chapter seven (7) days before any deadline provided.

"(b) It shall be the duty of each county election commission:

"(1) To accept and file any information filed pursuant to the requirements of this chapter and information voluntarily supplied that exceeds the requirements of this chapter;

"(2) To make statements and other information filed with it available for public inspection and copying during regular office hours at reasonable expense;

"(3) To preserve such statements and other information for a period of five (5) years from date of receipt;

"(4) To notify all candidates for local public office and political campaign committees in a local election of the requirements for filing any statement required by this chapter seven (7) days before any deadline provided for herein.

"(c) It shall be the duty of the state election commission to furnish the name and address of any candidate for statewide public office and the language of any measure submitted to the people of the entire state to the librarian.

"(d) It shall be the duty of the attorney general and reporter to advise county election commissions, primary boards and registers-at-large of their duties and responsibilities required by this chapter."

For repeal of the former section, see compiler's notes under § 2-10-101.

Amendments. The 1984 amendment in (a)(8) deleted "and all political campaign committees" following "state public office", deleted "and political campaign committee" and (b)(4), following "local public office"; and substituted "secretary of state" for references to "librarian" throughout the section.

2-10-104. Affirmation of statements before notary or other persons.

All statements required by this chapter shall be sworn to or affirmed before a notary public or some other person authorized by law to administer oaths as being true and correct by the person filing such statements. [Acts 1980 (Adj. S.), cch. 861, § 5.]

2-10-105. Filing of contribution and expenditure reports—Eligible treasurers [Effective January 1, 1985].—(a) Each candidate for state public office or political campaign committee in a state election shall file with the secretary of state a statement of all contributions received and all expenditures made by or on behalf of such candidate or such committee; provided, however, that each candidate for the office of member of the general assembly and each political campaign committee for such candidate shall file a copy of such statement with the county election commission in the county of which the candidate is a resident.

(b) Each candidate for local public office or political campaign committee for a local election shall file with each county

election commission of the county where the election is held, a statement of all contributions received and all expenditures made by or on behalf of such candidate or such committee.

(c) The statements required by subsections (a) and (b) of each candidate, each single candidate political campaign committee, or single measure political campaign committee shall be filed in the following manner:

(1) Statements for any primary election or referendum, from and including the day that the first contribution was received or the first expenditure made whichever was earlier, through the tenth day before any such election or referendum shall be filed not later than seven (7) days before the election.

(2) Statements for any special or general election or referendum:

(A) From and including the day that the first contribution was received or the first expenditure made whichever was earlier; or

(B) From the last day included in any prior report whichever is later through the tenth day before any such election or referendum shall be filed not later than seven (7) days before the election.

(3) Statements for any runoff election, from the last day included in any prior report through the tenth day before any such election shall be filed not later than seven (7) days before the election.

(4) Statements from the last day of the prior report through the forty-fifth day after the primary, general, special, or runoff election or referendum shall be filed not later than forty-eight (48) days after the election. When no subsequent report is required by this section or § 2-10-106 because such statement has a zero balance of contributions and expenditures, such statement shall be the final statement.

(d) Each multicandidate political campaign committee shall file reports according to § 2-10-107 quarterly, within ten (10)

days following the first day of January, April, July and October respectively. Each report shall include transactions occurring since the preceding report.

(e) Each candidate and each political campaign committee shall certify the name and address of its political treasurer to the secretary of state before it can receive or make an expenditure in a state election or to the county election commission before it can receive or make an expenditure in an election in the county where the election commission is located. A candidate may appoint himself as the political treasurer. A candidate or political campaign committee shall notify the secretary of state or county election commission of any changes in the office of their political treasurer. Any such statements filed pursuant to this chapter shall be cosigned by the candidate, if such candidate appoints a political treasurer, other than himself.

(f) All records used by the candidate or political campaign committee to complete a statement required by this chapter shall be retained by the candidate or political campaign committee for at least one year after the date of the election to which the records refer.

(g) Separate reporting shall be required for both primary elections and separately for general elections. Cumulative reporting for both primary and general elections for the same office in the same year is expressly prohibited. Provided, however, an appointment of a political treasurer pursuant to subsection (e) of this section may be cumulative, and one (1) such appointment shall be sufficient for both a primary and general election for the same office in the same year. A successful primary candidate shall not be required to certify a political treasurer for the general election if he had previously certified such political treasurer prior to the primary election. [Acts 1980 (Adj. S.), ch. 861, § 6; 1981, ch. 136, § 1; 1984, ch. 683, §§ 3, 7.]

Compiler's Notes. For repeal of the former section, see compiler's notes under § 2-10-101.

The provisions of this section, as effective until January 1, 1985, read: "(a) Each candidate for state public office or political campaign committee in a state election shall file with the librarian a statement of all contributions received and all expenditures made by or on behalf of such candidate or such committee; provided, however, that each candidate for the office of member of the general assembly and each political campaign committee for such candidate shall file a copy of such statement with the county election commission in the county of which the candidate is a resident.

"(b) Each candidate for local public office or political campaign committee for a local election shall file with each county election commission of the county where the election is held, a statement of all contributions received and all expenditures made by or on behalf of such candidate or such committee.

"(c) The statements required by subsections (a) and (b) of each candidate and political campaign committee shall be filed for the following periods:

"(1) From and including the day that the first contribution was received or the first expenditure made whichever was earlier, through the tenth day before any election or referendum.

"(2) The ninth day before any election or referendum through the forty-fifth day after the election.

"(3) In the event there is a general election held after a primary election, or a runoff election held after a general election, the period for filing the statements provided for in subsection (c)(2) of this section after the primary or general election and subsection (c)(1) of this section before the following general or runoff election, shall, in lieu thereof, be from the ninth day before the first election through the tenth day before the general or runoff election.

"(4) In the case of continuing committees not organized in support of any particular candidate or political party, or to support or oppose a question subject to referendum, reports

according to § 2-10-107 hereof shall be filed quarterly, within ten (10) days following the first day of January, April, July, and October respectively, and not less than seven (7) days prior to any election in which contributions may be made. Each report shall include transactions occurring since the preceding report.

"(d) The statements for the periods in subsection (c) of this section shall be filed as follows:

"(1) For the filing prior to any election or referendum, not later than seven (7) days before the election.

"(2) For the filing after any primary election or referendum not later then seven (7) days before the general election.

"(3) For the filing after any general election, not later than forty-eight (48) days after the election.

"(e) Each candidate and each political campaign committee shall certify the name and address of its political treasurer to the librarian before it can receive or make an expenditure in a state election or to the county election commission before it can receive or make an expenditure in an election in the county where the election commission is located. A candidate may appoint himself as the political treasurer. A candidate or political campaign committee shall notify the librarian or county election commission of any changes in the office of their political treasurer. Any such statements filed pursuant to this chapter shall be cosigned by the candidate, if such candidate appoints a political treasurer, other than himself.

"(f) All records used by the candidate or political campaign committee to complete a statement required by this chapter shall be retained by the candidate or political campaign committee for at least one year after the date of the election to which the records refer.

"(g) Separate reporting shall be required for both primary elections and separately for general elections. Cumulative reporting for both primary and general elections for the same

office in the same year is expressly prohibited. Provided, however, an appointment of a political treasurer pursuant to subsection (1) of this section may be cumulative, and one (1) such appointment shall be sufficient for both a primary and general election for the same office in the same year. A successful primary candidate shall not be required to certify a political treasurer for the general election if he had previously certified such political treasurer prior to the primary election."

Amendments. The 1984 amendment substituted "secretary of state" for "librarian" throughout the section and substituted the present provisions in (c) and (d), for the former provisions which can be found set out in the Compiler's Notes to this section.

2-10-106. Contribution excess—Expense deficit—Supplemental statement [Effective January 1, 1985].—If a statement filed under subsection (c)(4) of § 2-10-105 shows an unexpended balance of contributions or an expenditure deficit, the candidate or political campaign committee shall file with the secretary of state or the county election commission whichever is required by § 2-10-105 a supplemental statement of contributions and expenditures. If a candidate wins momination, a supplemental statement need not be filed by the candidate with respect to the nomination campaign. The supplemental statement shall be filed one (1) year after the election or referendum. Whenever no balance of contributions or no deficit of expenditures occurs, a supplemental statement may be filed prior to the expiration of one (1) years. [Acts 1980 (Adj. S.), ch. 861, § 7; 1984, ch. 683, §§ 7, 8.]

Compiler's Notes. For repeal of the former section, see compiler's notes under § 2-10-101.

Prior to January 1, 1985, this section reads: "If a statement filed under subsection (c)(2) of § 2-10-105 shows an unexpended balance of contributions or an expenditure deficit, the candidate or political campaign committee shall file with the librarian of this chapter or the county election commission whichever is required by § 2-10-105 a supplemental statement

of contributions and expenditures. If a candidate wins nomination, a supplemental statement need not be filed by the candidate with respect to the nomination campaign. The supplemental statement shall be filed one (1) year after the election or referendum. If no balance of contributions and no deficit of expenditures exists a supplemental statement may be filed prior to the expiration of one (1) year."

Amendments. The 1984 amendment substituted "(c)(4)" for "(c)(2)" in the first sentence and in the last sentence substituted the present provisions for those set forth in the Compiler's Notes; and substituted "secretary of state" for "librarian" throughout the section.

2-10-107. Statement—Content [Effective January 1, 1985].—(a) A statement filed under §§ 2-10-105 or 2-10-106 shall consist of either:

(1) A statement that neither the contributions received nor the expenditures made during the period for which the statement is submitted exceeded one thousand dollars ($1,000); or,

(2) A statement setting forth:

(A) Under contributions, a list of all the contributions received, as follows:

(i) The statement shall list full name and complete address of each person who contributed a total amount of more than one hundred dollars ($100) during the period for which the statement is submitted, and the amount contributed by that person; and

(ii) The statement shall list as a single item the total amount of contributions of one hundred dollars ($100) or less.

(B) Under expenditures, a list of all expenditures made as follows:

(i) The statement shall list the full name and address of each person to whom a total amount of more than one hundred dollars ($100) was paid during the period for which the state-

ment, is submitted, the total amount paid to that person, and the purpose thereof, and

(ii) The statement shall list the total amount of expenditures of one hundred dollars ($100) or less each, by category, without showing the exact amount of or vouching for each such expenditure.

(b) When each candidate or political campaign committee required to file a statement under §§ 2-10-105 or 2-10-106 has a zero balance of contributions and expenditures, such candidate or political campaign committee shall file a statement setting forth such information. [Acts 1980 (Adj. S.), ch. 861, § 8; 1984, ch. 683, § 6.]

Compiler's Notes. For repeal of the former section, see compiler's notes under § 2-10-101.

Prior to January 1, 1985, this section reads as set out in (a).

Amendments. The 1984 amendment added (b).

2-10-108. Sworn complaint on statements of candidates—Penalty for false complaint—(a) A registered voter of Tennessee may file a sworn complaint alleging that a statement filed regarding an election for which that voter was qualified to vote, does not conform to law or to the truth or that a person has failed to file a statement required by law.

(b) All sworn complaints on a statement of a candidate for state public office or a political campaign committee for such candidate must be filed in the office of the attorney general.

(c) All sworn complaints on a statement of a candidate for local public office or a political campaign committee for such candidate must be filed in the office of the district attorney general who represents the judicial district in which the voter resides.

(d) Any person who knowingly and willfully files a sworn complaint which is false or for the purpose of harassment shall be guilty of a misdemeanor and shall be liable for reasonable

attorneys' fees incurred by the candidate who was the subject of such complaint. [Acts 1980 (Adj. S.), ch. 861, § 9.]

2-10-109. Duties of attorney general.—(a) It shall be the duty of the attorney general:

(1) To provide opinions upon the requirements of this statute to the librarian, members of the general assembly, district attorneys general, the state and county election commissions, and such other officials who are charged with the administration of this law;

(2) To investigate any sworn complaint filed in accordance with § 2-10-108 (b) of this chapter; and

(3) To seek injunctions or fines in the chancery court of this state to enforce the provisions of this chapter against any candidate or political campaign committee about whom a sworn complaint has been filed if such action is justified.

(b) It shall be the duty of each district attorney general:

(1) To investigate any sworn complaint filed in accordance with § 2-10-108 (c) of this chapter.

(2) To seek injunctions from the chancery courts of this state to enforce the provisions of this chapter against any campaign committee or candidate about whom a sworn complaint has been filed, if such action is justified. [Acts 1980 (Adj. S.), ch. 861, § 10.]

2-10-110. Penalties.—(a) Any candidate or political campaign committtee who fails to file a statement required by this chapter or who files a statement that does not conform to the truth or to the requirements of this chapter, shall be fined an amount not to exceed one thousand dollars ($1,000);

(b) Any candidate who willfully violates any of the provisions of this chapter shall forfeit his right to be qualified as a nominee for the general election, or be qualified as a candidate for a runoff election or be given a certificate of election;

(c) Any person who willfully violates the provisions of this chapter is guilty of a misdemeanor and upon conviction shall be

punished as provided by law. [Acts 1980 (Adj. S.), ch. 861, § 11.].

2-10-111. Inspection of statements—Notice to candidate or political campaign committee [Effective January 1, 1985].—(a) Whenever statements or other information are inspected as provided in §§ 2-10-103(a)(4) or 2-10-103(b)(2), the secretary of state or county election commission, whichever is applicable, shall make a record of such inspection and provide notice, within thirty (30) days from the date of the inspection, to the candidate or single candidate political campaign committee whose files, statements or records have been inspected or copied:

(1) That such inspection has taken place;

(2) The name and address of the person making such inspection;

(3) For whom the inspection was made; and

(4) The date of such inspection.

(b) Such record shall be available for public inspection during the normal business hours of the secretary of state or county election commission. [Acts 1980 (Adj. S.), ch. 861, § 12; 1984, ch. 683, §§ 4, 7.]

Compiler's Notes. The provisions of this section as effective until January 1, 1985, read: "(a) Whenever statements or other information are inspected as provided in §§ 2-10-103 (a)(4) or 2-10-103 (b)(2), the librarian or county election commission, whichever is applicable, shall make a record of such inspection and provide notice, within five (5) days from the date of the inspection, to the candidate or political campaign committee whose files, statements or records have been inspected or copied:

"(1) That such inspection has taken place;

"(2) The name and address of the person making such inspection;

"(3) For whom the inspection was made; and

"(4) The date of such inspection.

"(b) Such record shall be available for public inspection during the normal business hours of the librarian or county election commission."

Amendments. The 1984 amendment in (a) substituted "thirty" for "five" and added "single candidate" preceding "political campaign committee"; and substituted "secretary of state" for "librarian" in (a) and (b).

(2)

Supreme Court, U.S.
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No. 87-317

In The

Supreme Court of the United States

October Term, 1987

BEMIS PENTECOSTAL CHURCH, *et al.*,

Appellants,

vs.

STATE OF TENNESSEE, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

MOTION OF APPELLEE, STATE OF TENNESSEE, et al., TO DISMISS [OR AFFIRM]

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QUESTIONS PRESENTED

1. Do the registration and financial disclosure requirements of Tenn. Code Ann. § 2-10-105 as applied to the appellant churches violate the free speech clause of the United States Constitution in light of *Talley v. California*?

2. Does Tennessee's Campaign Financial Disclosure Law, Tenn. Code Ann. § 2-10-101, *et seq.*, as applied to the appellant churches violate the free exercise and establishment clauses of the First Amendment of the United States Constitution?

3. Has the State in this case provided sufficient compelling reasons to justify any burden placed upon the free speech or free exercise rights of the appellant churches by the registration and financial disclosure requirements of Tenn. Code Ann. § 2-10-105?

PARTIES TO THE PROCEEDINGS BELOW

The appellants in this action are: Bemis Pentacostal Church, Calvary Baptist Church, Inglewood Baptist Church, First Assembly of God, First Baptist Church of Bemis, First Baptist Church of Jackson, Malesus Baptist Church, North Jackson Baptist Church, Northside Assembly of God, Poplar Heights Baptist Church, Skyline Church of Christ, West Jackson Baptist Church, and Woodland Baptist Church.

The appellees in this action are: the State of Tennessee, W. J. Michael Cody, Attorney General and Reporter for the State of Tennessee, Jerry Woodall, District Attorney General of the Twenty-sixth Judicial Circuit of the State of Tennessee, and David Haines,[1] State Election Coordinator of the State of Tennessee.

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[1] Pursuant to Rule 40.3 of the Supreme Court Rules, David Haines has been substituted for David Collins as State Election Coordinator of the State of Tennessee as a result of Mr. Collins' resignation and Mr. Haines appointment effective May 1, 1987.

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No. 87-317

In The

Supreme Court of the United States

October Term, 1987

BEMIS PENTECOSTAL CHURCH, *et al.*,

Appellants,

vs.

STATE OF TENNESSEE, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

MOTION OF APPELLEE, STATE OF TENNESSEE, et al., TO DISMISS [OR AFFIRM]

Pursuant to Rule 16.1, the appellees, State of Tennessee, et al. (State) move to dismiss or affirm the appeal filed on behalf of Bemis Pentacostal Church, et al. (appellants). This motion is grounded on the fact that the questions on which the decision of this case depends are so unsubstantial as to not need further argument and do not present a substantial federal question.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved in this appeal are the First and Fourteenth Amendments to the United

States Constitution. The statute involved is the Tennessee Campaign Financial Disclosure Act of 1980 as amended. Tenn. Code Ann. § 2-10-101, *et seq.* These constitutional and statutory provisions are set out in the appellants' Jurisdictional Statement at pages 67a-88a.

STATEMENT

A referendum was held in the city of Jackson, Tennessee on August 2, 1984 pertaining to the question of whether to legalize the sale of liquor-by-the-drink within the city limits of Jackson. Before that election, it was known to the public that the appellants contributed approximately $5,150.00 for the defeat of the referendum to a political campaign committee known as "Citizens against Drugs and Alcohol" (CADA) which had filed campaign financial disclosure statements pursuant to Tenn. Code Ann. § 2-10-101, *et seq.* disclosing the names of the appellants as contributors along with the amounts of their contributions. Some of the appellants paid for advertisements opposing the referendum in the local newspaper *The Jackson Sun*. However, prior to the trial the amounts paid for those advertisements had not been disclosed to the public by the appellants. The referendum was defeated by a vote of 6,514 against versus 6,474 in favor, a majority of forty votes.

At the trial in this case, the testimony of Reverend John Lee Taylor, pastor of the West Jackson Baptist Church, revealed the fact that his church had spent approximately $1,084.00 in opposition to the referendum

through television, radio and newspaper advertisements. Had it not been for the trial of this case, those facts would have remained unknown to the public to this day. Likewise, Reverend Billy Ringold of the Skyline Church of Christ in Jackson, Tennessee testified that his church spent approximately $800.00 in television advertisements which were not reported under the disclosure law.

The catalyst for this litigation occurred before the referendum election when David Collins, then State Coordinator of Elections for the State of Tennessee (Collins), received in the mail an anonymous letter questioning the legality of an advertisement by the West Jackson Baptist Church opposing the referendum which apparently appeared in the local newspaper, *The Jackson Sun*, prior to the election. In response to this letter, Mr. Collins sent a letter with a copy of the advertisement to Jerry Woodall, the District Attorney General for the Twenty-sixth Judicial Circuit of the State of Tennessee (Woodall). Mr. Collins stated in his letter that it appeared to him that the "church in question violated the provisions of Section 2-10-105, Tennessee Code Annotated, in failing to designate a political treasurer and thereafter file the required campaign disclosure statement." Finally, Mr. Collins indicated in the letter that since the referendum was a local question he was referring the matter to General Woodall "for whatever action he deemed appropriate".

In response to Mr. Collins' letter, Mr. Woodall requested the opinion of W. J. Michael Cody, the Attorney General and Reporter for the State of Tennessee (Cody), as to the applicability of Tennessee's Campaign Financial Disclosure Act to a group organized to defeat a local liquor

referendum. Attorney General Cody issued an opinion on August 29, 1984 stating that "such a church must file a statement with the county election commission".

As a result of that opinion, Mr. Woodall notified the appellants on August 30, 1984 that they would have to comply with the provisions of Tenn. Code Ann. § 2-10-101 *et seq.* by filing a post-campaign financial disclosure statement by September 17, 1984 as required by Tenn. Code Ann. § 2-10-105 or be subject to prosecution under Tenn. Code Ann. § 2-10-109(b). On September 10, 1984, the appellants filed suit in the Chancery Court of Madison County, Tennessee requesting that Tennessee's Campaign Financial Disclosure Law be held inapplicable to them or in the alternative unconstitutional.

On that same day, the appellants filed a motion for temporary injunction seeking to enjoin the State from prosecuting or indicting the appellants for failure to comply with Tenn. Code Ann. § 2-10-101 *et seq.* The parties entered into an agreed order which was approved by the chancery court on September 13, 1984 stating that "the failure of the plaintiffs or other churches or similarly situated religious organizations in the Twenty-sixth Judicial Circuit to file certain reporting and disclosure reports as required by the Campaign Financial Disclosure Act of 1980 . . . after the expiration of the forty-five day period provided for the filing of said act, should not be considered by the defendants or any one of them as willful violation of said act for a period not to exceed thirty days after the expiration of any appeal available to the plaintiffs in the course of the proceedings now pending before this court."

The trial of this case was held on August 7, 1985, and the chancery court issued an opinion on October 30, 1985 holding that Tennessee's Campaign Financial Disclosure Law did apply to the appellants and affirmed its constitutionality in all respects as to the appellants. An appeal of the decision of the chancery court was taken by the appellants to the Tennessee Court of Appeals on November 26, 1985. That court issued its opinion on August 21, 1986 holding that the Campaign Financial Disclosure Law did apply to the appellants, but further that Tennessee's Campaign Financial Disclosure Law as applied to referenda elections violates the free speech clause of the First Amendment of the United States Constitution.

The State filed an application for permission to appeal with the Tennessee Supreme Court which granted its application. After the submission of briefs and oral arguments, the Tennessee Supreme Court found that the free speech issue was the sole determinative issue and that it was unnecessary to address the other issues to resolve this case. Tennessee's highest court then reversed the decision of the Tennessee Court of Appeals and held that Tennessee's Campaign Financial Disclosure Law as applied to the appellants did not violate the free speech clause of the First Amendment of the United States Constitution.

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ARGUMENT

I.

THE QUESTION OF WHETHER THE FREE SPEECH RIGHTS OF THE APPELLANTS ARE VIOLATED BY REGISTRATION AND DISCLOSURE REQUIREMENTS OF TENNESSEE'S CAMPAIGN FINANCIAL DISCLOSURE LAW HAS ALREADY BEEN ANSWERED BY THIS COURT IN THE NEGATIVE

The appellants in their Jurisdictional Statement argue that this Court has never directly addressed the issue of the constitutionality of prior registration and disclosure requirements in referenda elections. Jurisdictional Statement, p. 11. It is the State's contention that this Court has already implicitly upheld disclosure requirements in referenda elections against free speech attacks.[2] A review of the decisions of this Court for the past dozen years will reveal that the Tennessee Supreme Court correctly held that Tennessee's Campaign Financial Disclosure Law as applied to local referenda elections does not violate the free speech clause.

In 1976, this Court was confronted with a constitutional challenge to the Federal Election Campaign Act of 1974 in the case of *Buckley v. Valeo*, 421 U.S. 1 (1976). The congressional act is similar to Tennessee's Campaign

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[2]The State would note that in the case of *Iowans for Tax Relief v. The Campaign Finance Disclosure Commission*, 331 N.W. 2d 862 (Iowa 1983) appeal dismissed 464 U.S. 879 (1983), this Court dismissed an appeal from a decision by the Iowa Supreme Court which held that the application of a campaign financial disclosure law to an organization not created for the support or defeat of a referendum did not violate the free speech clause.

Financial Disclosure Law to the extent that both require political committees to disclose on reporting forms the source of every contribution and the receipt of every expenditure exceeding $100.00 in each instance along with the purposes of such expenditures. However, the federal law goes further than Tennessee's law in two respects. First, the amount of political contributions and expenditures for elected federal offices is limited to $1,000.00. Tennessee's law contains no such limitations on either contributions or expenditures for either candidates or referenda elections. Second, Tennessee's campaign financial disclosure law does not require the disclosure of contributions and expenditures of over $100.00 unless a total of $1,000.00 is spent or received. Tenn. Code Ann. § 2-10-107(a)(1). The congressional enactment has no such graduated disclosure mechanism.

The *Buckley* Court in applying the strict scrutiny test to the disclosure requirements of the Federal Election Campaign Act held that although compelled disclosure within the context of campaign finances infringed upon the fundamental right of free speech, such an intrusion was justified by compelling state interests. In particular, the Court enumerated three compelling reasons:

> First, disclosure provides the electorate with information as to "where political campaign money comes from and how it is spent by the candidate." In order to aid the voters in evaluating those who seek federal office, it allows voters to place each candidate in a political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. Sources of candidates' financial support would also alert the voter to the interest in which a candidate is most likely to be responsive and thus facilitate predications on future performance in office.

> Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributors and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after an election ....
>
> Third, and not least significant, record keeping and reporting disclosure requirements are essential means of gathering the data necessary to protect the violations of the contribution limitations described above.

Id. at 66-67.

Two years after the *Buckley* decision, this Court in *First National Bank of Boston v. Bellotti,* 435 U.S. 765 (1978) struck down a Massachusetts statute which prohibited any corporate contributions in referenda elections on grounds that the state had failed to provide a sufficient compelling interest to justify such an intrusion on the free speech rights of corporations. On the other hand, the *Bellotti* Court did state the following with regard to disclosure requirements for corporations in referenda elections:

> Corporate advertising unlike some methods of participation in political campaigns is likely to be highly visible. Identification of the sources of advertising may be required as a means of disclosure, so that people will be able to evaluate the arguments to which they are being subjected. *See Buckley,* 424 U.S. at 66-67, 96 S.Ct. at 57-58; *United States v. Harriss,* 347 U.S. 612, 625-26, 76 S.Ct. 808, 815-17, 98 L.Ed.2d 989 (1954). In addition, we emphasized in *Buckley* the prophylactic effect of requiring that disclosure of communication be disclosed. 424 U.S. at 67, 96 S.Ct. at 57.

Id., 435 U.S. at 792, fn. 32.

In 1981, this Court was confronted with an ordinance which prohibited the contribution of more than $250.00 in support or opposition to a measure in the case of *Citizens Against Rent Control v. City of Berkeley,* 454 U.S. 290 (1981). The *CARC* Court struck down the limitation on contributions as unconstitutional because such a limit was "an impermissible restraint on freedom of association . . ." *Id.* at 300. However, the Court noted with approval another provision in the same ordinance which did require disclosure of all contributors of more than $50.00 implying that such a disclosure was the least restrictive means of supporting the state's interest in preserving the integrity of the election process. In particular the *CARC* Court stated the following:

> Whatever may be the state's interest or degree of that interest in regulating and limiting contributions to or expenditures of a candidate or a candidate's committee, there is no significant state or public interest in curtailing debate and discussion of a valid measure. By placing limits on contributions which in turn limit expenditures finally impairs freedom of expression. The integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed; if it is thought wise, legislature can outlaw an anonymous contribution.

Id. at 300-01.

In this case, the Tennessee Supreme Court quite correctly determined that this line of cases provides a clear implicit recognition by this Court that the disclosure requirements of Tenn. Code Ann. § 2-10-105 as applied to the appellants do not violate the free speech clause. In particular, the Tennessee court stated the following:

> From these cases, none of which involves the issue as it is presented in this case, we conclude that the United States Supreme Court has implicitly—if not explicitly—countenanced the constitutionality of simple disclosure requirements such as those imposed by the Tennessee act. In the course of invalidating the financial limitations in *Buckley, Bellotti* and *Citizens Against Rent Control* (the latter two of which involve state regulation of referenda election campaigns) the Court has repeatedly intimated that simple disclosure imposed by a narrowly construed statute does not violate the free speech clause as a general matter, at least absent some indication that the disclosure would threaten the existence of an association or result in retaliations against the members of a group. We are convinced that the act as drafted and construed does not violate the free speech clause of the First Amendment to the Constitution of the United States.

Bemis Pentacostal Church v. State of Tennessee, 731 S.W. 2d 897, 906-07 (Tenn. 1987).

In their Jurisdictional Statement, the appellants argue that the regulations in *Bellotti* and *CARC* "were not declared invalid because the state could have used a less restrictive means to attain the ends sought. They were declared unconstitutional because no compelling state interest was identified that was vindicated by the statute." Jurisdictional Statement, p. 13. The State would respectfully disagree with the appellants' contention which ignores the clear language of both *Bellotti* and *CARC.*

In *Bellotti,* this Court did reject Massachusetts' argument that the risk of corruption of the election process was present in referenda elections. *Bellotti,* 435 U.S. at 790. This holding is clearly distinguishable from the present case in that the nature of the interest asserted by the State

is totally different. The compelling state interest asserted in this case was primarily informing voters of how a referenda election is financed, not the risk of corruption of that process. In *Bellotti,* this Court indicated that "identification of the sources of advertising may be required as a means of disclosure, so that people will be able to evaluate the arguments to which they are being subjected." *Id.* at 1424, fn. 32

More importantly, the Court in both *Bellotti* and *CARC* was confronted with direct prohibitions and limitations on contributions and expenditures in referenda elections. As the Court in *CARC* said, there is no significant state or public interest in curtailing debate and discussion of a valid measure by limiting contributions to or expenditures in the referenda context. On the other hand, compelled disclosure of contributions and expenditures of the type required under Tennessee's Campaign Financial Disclosure Law is significantly related to informing voters of the election process and protecting the integrity of the political system.

The appellants also argue that the case of *Talley v. California,* 362 U.S. 60 (1960) in which this Court struck down an ordinance prohibiting the distribution of anonymous hand bills, applies in this case. This analysis ignores the *Buckley* court's distinction of *Talley* from the disclosure requirements in elections in *Buckley.* In particular, this Court stated the following with regard to the disclosure reporting requirements of Section 434(e) of the Federal Election Campaign Act:

> Section 434(e), as we have construed it, does not contain the infirmities of the provisions before the Court

> in *Talley v. California,* 362 U.S. 60, 4 L.Ed.2d 559, 80 S.Ct. 536 (1960) and *Thomas v. Collins,* 323 U.S. 516, 89 L.Ed. 430, 65 S.Ct. 3 (1945). The ordinance found wanting in *Talley* forbade all distribution of handbills that did not contain the name of the printer, author or manufacturer and the name of the distributor. The city urged that the ordinance was aimed at identifying those responsible for fraud, false advertising and libel, but the Court found that it was "in no manner so limited." [citation omitted]. Here, as we have seen the disclosure requirement is narrowly limited to those situations where the information sought has a substantial connection with the governmental interest sought to be advanced. *Thomas* held unconstitutional a prior restraint in the form of a registration requirement for labor organizers. The Court found the state's interest insufficient to justify the restrictive effect of the statute. The burden imposed by Section 434(e) is no prior restraint, but a reasonable minimally restrictive method of furthering First Amendment values by opening the basic processes of our federal election system to public view.

Buckley, 424 U.S. at 81-82.

Likewise, in the case of *Wilson v. Stocker,* 819 F.2d 943 (10th Cir. 1987), cited by the appellants in their Jurisdictional Statement, the Tenth Circuit Court of Appeals in striking down a state statute prohibiting anonymous distribution of campaign literature distinguished the *Buckley* decision stating that "*Buckley* is concerned with federal laws regulating the disclosure of those who make political contributions and expenditures, the rationale applied there is of little help in evaluating a law such as Section 15-111, which applies to merely those who distribute campaign literature." *Id.* at 949.

Further, in the case of *People v. White,* 506 N.E.2d 1284 (Ill. 1987), cited by the appellants in their Jurisdictional Statement, the Illinois Supreme Court distinguishes a statute prohibiting the distribution of political literature which does not have printed the name and address of the persons publishing and distributing the literature from campaign financial disclosure laws in two respects. First, contributing to a political campaign, unlike distributing political literature, is not an act of pure speech. Second, the plaintiffs in *Buckley* conceded and the Court agreed that the disclosure requirements appear to be the least restrictive alternatives for achieving the state's compelling interests. *Id.* at 1290.

The only argument asserted by appellants in response to the State's compelling interest of "informing the voters of how a referendum election is financed" is briefly stated as follows:

> The asserted interest in an informed electorate has been addressed several times. The state's fear that voters might make an ill-advised choice does not provide the state with a compelling justification for limiting speech. *Brown v. Hartledge,* 456 U.S. 455, 460 (1982); *accord Commonwealth v. Dennis,* 329 N.E.2d 706, 709 (Mass. 1975) (striking down a law prohibiting anonymous campaign literature.)

Appellants' Jurisdictional Statement, p. 16.

Neither the *Brown* nor *Dennis* cases have anything to do with whether informing voters in referenda elections how campaigns are financed is a compelling state interest. In the *Brown* decision, this Court was concerned with a statute prohibiting candidates from offering benefits to voters in exchange for votes; whereas, in the *Dennis* deci-

sion the Massachusetts Supreme Court was concerned with a law prohibiting distribution of anonymous campaign literature. As has already been stated, this Court in *Buckley* distinguished *Talley* and its progeny. Furthermore, *Bellotti* and *CARC* laid to rest any arguments that simple disclosure requirements in all elections including referenda elections are prohibited by the free speech clause.

The appellants also allege a violation of their associational rights because groups whose activities fall within the purview of the Campaign Financial Disclosure Law must file disclosure statements while individuals are not required to do so. This Court in *Buckley* has already determined that important governmental interests justify an interference with association created by disclosure. These interests apply equally to ballot questions. *Citizens Against Rent Control, supra; Advisory Opinion on Constitutionality of 1975,* P. A. 227, 396 Mich. 465, 242 N.W.2d 3 (1976).

Each candidate or political campaign committee must file a disclosure statement of all contributions received and expenditures made. Tenn. Code Ann. § 2-10-105. If an individual provides a total amount of more than $100.00 during the period covered by the statement, the statement must list the name of individual, the complete address, and the amount contributed. Tenn. Code Ann. § 2-10-107. Thus, the individual's financial participation and the extent of the participation is revealed. If groups were not required to file statements indicating the individuals who gave over $100.00, then many contributions would go unrevealed.

> Funds provided to a candidate or political party or campaign committee either directly or indirectly through an intermediary constitute a contribution.

> In addition, dollars given to another person or organization that are earmarked for political purposes are contributions under the act.

Buckley v. Valeo, 424 U.S. at 24. The disclosure required by Tennessee's Campaign Financial Disclosure Law prevents the hiding of contributions by funneling them through an intermediary. In this case, the intermediaries are the appellants.

Contrary to the arguments of the appellants in their Jurisdictional Statement, it is obvious that the question of the constitutionality of disclosure and registration requirements of Tennessee's Campaign Financial Disclosure Laws as applied to the appellants is a settled and unsubstantial question which needs no review by this Court. This conclusion is based upon the fact that this Court has implicitly upheld the constitutionality of such simple disclosure requirements as applied to referenda elections through *Buckley, Bellotti,* and *CARC.*

II.

THE APPELLANTS HAVE FAILED TO PRESENT ANY SUBSTANTIAL QUESTION REGARDING THE CONSTITUTIONALITY OF TENNESSEE'S CAMPAIGN FINANCIAL DISCLOSURE LAW WITHIN THE CONTEXT OF THE FREE EXERCISE AND ESTABLISHMENT CLAUSES OF THE FIRST AMENDMENT

First, it should be noted that the appellants' free exercise argument has little weight in light of this Court's decision in *Heffron v. International Society for Krishna Consciousness,* 452 U.S. 640 (1981). The facts in the *Heffron* decision concern a Minnesota state fair regula-

tion which required all groups which desired to sell or exhibit materials to do so from fixed locations. The plaintiffs, a religious group, sought to have this rule declared unconstitutional as applied to them.

The *Heffron* Court agreed that such a restriction was an infringement upon the free speech rights of everyone who wished to sell and distribute written materials or to solicit funds. However, the Court found a compelling state interest furthered by the rule being "the need to maintain the orderly movement of the crowd given the large number of exhibitors and persons attending the fair." *Id.* 452 U.S. at 649-50. In response to the plaintiff's argument that a judicial exception for the plaintiffs on the grounds of their free exercise rights was a less restrictive alternative which would further this compelling state interest, the Court stated the following:

> The justification for the rule should not be measured by the disorder that would result from granting an exemption solely to the plaintiffs. That organization has no central claim to first amendment objections as compared to other religions who also distribute literature and solicit funds. None of our cases suggest that the inclusions of the paripetitic solicitation as part of church ritual entitles church members to solicitation rights in public forums superior to those members of other religious groups that raise money but do not ritualize the process. Nor for the present purposes do religious organizations enjoy rights to communicate, distribute and solicit on the fair grounds superior of those of other organizations having social, political or other idealogical messages to prosylitize. These non-religious groups seeking support for their activities are entitled to rights equal to those of religious groups to enter a political forum and spread their views either by soliciting funds or by distributing literature.

Id. 452 U.S. at 652-53. The appellants are asking this Court to afford them a privilege not granted to any other group in the election process. Fundamental fairness and equality in the application of the disclosure law is clearly a compelling reason to justify its application to churches which participate in the election process for whatever reason.

Appellants have indicated that *United States v. National Committee for Impeachment,* 469 F.2d 1135 (2nd Cir. 1972), and *American Civil Liberties Union v. Jennings,* 366 F.Supp. 1041 (D.D.C. 1973), vacated as moot sub nom *Staats v. ACLU,* 422 U.S. 1030 (1975), support their contention that disclosure acts cannot be applied to "non-political" organizations. Yet, both cases dealt with advertisements that did not advocate a particular election result. Therefore, the courts found that they did not fall within the scope of the Federal Election Campaign Act.[3] These two cases concern the phrase "for the purpose of influencing" an election. In *Buckley v. Valeo,* 424 U.S. at 80, this Court construed such language as reaching only expenditures that expressly advocate a particular election result. Similarly, the Tennessee Campaign Financial Disclosure Act "is triggered only when a group is financing election outcome specific advocacy in a particular campaign." *Bemis Pentacostal Church v. State of Tennessee,* 731 S.W.2d at 905. A finding of express advocacy depends upon the use of words such as "vote for," "elect," "vote against," and "defeat." *Buckley v. Valeo,* 424

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[3]It should also be noted that both of these cases involve free speech and have absolutely nothing to do with the religion clauses.

U.S. at 44, n. 52. *See also Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, — U.S. —, 107 S.Ct. 616, 623 (1986). As the Tennessee Supreme Court found, the plaintiffs clearly engaged in financing election outcome specific advocacy. *Bemis Penticostal Church v. State of Tennessee,* 731 S.W.2d at 906. The ad placed by the West Jackson Baptist Church in *The Jackson Sun,* which ran July 15, 1984 contains the words "defeating this effort to bring liquor by the drink to our city", and "vote *against* liquor by the drink."

This Court has already found that requiring disclosure from organizations whose primary purpose was not the support of a ballot issue did not present a substantial federal question. In *Iowans for Tax Relief v. The Campaign Finance Disclosure Commission,* 331 N.W.2d 862 (Iowa 1983) appeal dismissed 464 U.S. 879 (1983), the Supreme Court of Iowa held that Iowa's disclosure act covered an organization which accepted contributions for the purpose of supporting a ballot measure, even though such activity was not the organization's primary purpose. The Court also found that the required disclosure was related to an overriding governmental interest and, consequently, that the act did not violate the freedom of speech or freedom of association guaranteed by the First Amendment. This Court dismissed the appeal "for want of a substantial federal question." *Id.*, 464 U.S. 879.

In *New York Civil Liberties Union, Inc. v. Acito,* 459 F.Supp. 75 (S.D. N.Y. 1978), the New York District Court indicated that the government's interest in disclosure of contributors to and expenditures of an "essentially apolitical organization" is minimal. *Id.* at 89. Yet, this Court

has found that "religious groups inevitably represent certain points of view and not infrequently assert them in the political arena . . . " *Walz v. Tax Commission,* 397 U.S. 669, 695 (1970) (Harlan, J., concurring), quoted in *Larson v. Valente,* 456 U.S. 228, 252 (1982). The testimony at the hearing in this case provides ample evidence of these appellants' participation in the election process. Furthermore, these appellants are not "unpopular" organizations such as the one involved in *Acito.* No evidence was introduced at trial that persons identified by appellants as having given one hundred dollars or more specifically toward the defeat of the liquor referendum would be subject to harassment or reprisals.

The exclusion of nonpartisan groups from the disclosure requirements would emasculate the Campaign Financial Disclosure Act. Large political contributions could then be made by utilizing these groups as intermediaries. *Buckley v. Valeo,* 424 U.S. at 24, n. 52. Such contributions would be undisclosed. Additionally, such an exemption would permit these groups to spend money with impunity in an effort to influence a referendum election without such efforts being exposed to the light of public knowledge.[4] In any given election, a nonpartisan group

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[4]It would appear that at least 30 states other than Tennessee require disclosure in the referenda context. *See:* Alaska Stat. § 15.13.070 (Supp. 1986); Cal. Elec. Code § 11553 (West 1977); Colo. Rev. Stat. § 1-45-104 (1980 & Supp. 1986); Conn. Gen. Stat. Ann. § 9-333 (West Supp. 1987); Fla. Stat. Ann. § 106.07 (West Supp. 1987); Ga. Code Ann. § 40-3814 (Sup. 1987); Hawaii Rev. Stat. § 11-195,213 (1983); Idaho Code § 67-6607 (Supp. 1987); Ind. Code Ann. § 3-9-5-2 (West Supp. 1987); Iowa Code

(Continued on following page)

can have a significant effect. For example, with the influence of these churches a liquor referendum was defeated in August 1984, but without their influence one was approved in November 1984.

The registration provision of the Act, Tenn. Code Ann. § 2-10-105(e) requires that each candidate and each political campaign committee certify the name and address of its political treasurer before it can receive or make an expenditure. Appellants object to the label "political campaign committee." Recently, this Court dealt with the use of the term "political propaganda" in the Foreign Agents Registration Act. *Meese v. Keene*, — U.S. —, 107 S.Ct. 1862 (1987). The appellee in that case alleged that showing films labeled "political propaganda" would injure his reputation and his ability to practice his profession. The district court held that Congress' use of the term was "a wholly gratuitous step designed to express the suspicion with which Congress regarded the materials." 619 F.Supp. 1111, 1125. This Court found that:

(Continued from previous page)

Ann. § 56.4 (West Supp. 1987); Kan. Stat. Ann. 25-901 (1986); Ky. Rev. Stat. § 121.180 (Supp. 1986); Mass. Gen. Laws Ann. Ch. 55, § 18 (West Supp. 1987); Mich. Comp. Laws Ann. § 169.225 (West Supp. 1987); Mo. Ann. Stat. § 130.041 (1987); Mont. Code Ann. § 13-37-225 (1987); Neb. Rev. Stat. § 49-1455, 1461 (1984); N. J. Stat. Ann. § 19:44A-8 (West Supp. 1987); N.M. Stat. Ann. § 1-19-27 (1985); N. Y. Election Law § 14-102 (McKinney 1978 & Supp. 1987); Ohio Rev. Code Ann. § 3517.11 (Page Supp. 1986); Okla. Stat. Ann. tit. 74, § 4211 (West 1987); Or. Rev. Stat. § 260.-073 (Supp. 1987); 25 Pa. Cons. Stat. Ann. § 3246 (Purdon Supp. 1987); R. I. Gen. Laws § 17-25-7 (Supp. 1983); S. D. Codified Laws Ann. § 12-25-19.1; (1982); Vt. Stat. Ann. tit. 17, § 2831 (1982 & Supp. 1986); Wash. Rev. Code Ann. § 42.17.080 (Supp. 1987); W. Va. Code § 3-8-5 (1987); Wisc. Stat. Ann. § 11.06 (West Supp. 1986).

> It is axiomatic that the statutory definition of the term excludes unstated meanings of that term. [citation omitted] Congress' use of the term "propaganda" in this statute, as indeed in other legislation, has no pejorative connotation. As judges it is our duty to construe legislation as it is written, not as it might be read by a layman, or as it might be understood by someone who has not even read it. [footnote omitted]

Meese v. Kenne, — U.S. at —, 107 S.Ct. at 1873. Additionally, the Court noted that the term "lobbying" has a negative connotation, yet stated "we are not aware of any suggestion that these negative connotations violate the First Amendment." *Id.,* — U.S. at —, n. 19, 107 S.Ct. at 1873, n. 19 (citing *United States v. Harriss,* 347 U.S. 612 (1954). Restraints of action based on such fears are self-censorship. *United States v. Harriss,* 374 U.S. 612, 626 (1954); *Commission on Independent Colleges and Universities v. New York Temporary State Commission on Regulation of Lobbying,* 534 F.Supp. 489 (N.D. N.Y. 1982).

The appellants continue to advocate the view that the exception to the definition of "contribution" found in Tenn. Code Ann. § 2-10-102(3)(B) somehow gives the news media a special advantage not given to religious groups. Appellants' Jurisdictional Statement at 23, 25. Yet the Tennessee Supreme Court, the final authority on the meaning of Tennessee's statutes, found:

> Plaintiffs' regular and continuing programs of broadcasting their religious services on radio or television or of publishing and distributing church newsletters are not and cannot be considered campaign contributions or expenditures, regardless of whether they advocate a particular election result or not in the course of such activities, as these activities are protected by

> the First Amendment and are expressly excluded from the operation of the Act under T.C.A. § 2-10-102 (3)(B).

Bemis Pentacostal Church v. State of Tennessee, 731 S.W. 2d 905. Churches and the media are treated the same under the Campaign Financial Disclosure Act. The exception found in Tenn. Code Ann. § 2-10-102(3)(B) is an exception from the definition of "contribution" only. It does not exempt religious organizations or the media from the scope of the Act. Consequently, both religious organizations and the media must comply with the Act when they engage in actions not exempted by Tenn. Code Ann. § 2-10-102(3)(B). For example, if a corporation which published a newspaper had given money to Citizens Against Drugs and Alcohol to help defeat the liquor-by-the-drink referendum, that corporation would be required to file a disclosure statement just like the Appellants.

In one small paragraph, appellants allege that the "unnecessary regulation" of these churches inhibits religion and fosters excessive entanglement between church and state. Appellant's Jurisdictional Statement at 26. They do not elaborate on how this occurs.

The necessity of covering all groups attempting to influence an election by engaging in outcome specific advocacy is well demonstrated in the record, the opinion of the Tennessee Supreme Court and elsewhere in this pleading and will not be repeated here. The opinions of this Court lead to the inescapable conclusion that no establishment clause violation is present in this case.

This Court has often noted that total separation of church and state is not possible. "No significant segment

of our society and no institution within it can exist in a vacuum or in total or absolute isolation from all other parts, much less from government." *Lynch v. Donnelly,* 465 U.S. 668, 673 (1984). The establishment clause requires government neutrality among competing religions. *Walz v. Tax Commission,* 397 U.S. 664 (1970). It also requires government neutrality between religion and non-religion. *Grand Rapids School District v. Ball,* 473 U.S. 373 (1985).

Under this Court's opinions, a statute must pass a three part test to avoid the prohibition of the establishment clause:

(1) The statute must have a secular purpose;

(2) The principal or primary effect of the statute must be one that neither advances nor inhibits religion;

(3) The statute must not foster an excessive governmental entanglement with religion.

Lemon v. Kurtzman, 403 U.S. 602 (1971); *Grand Rapids School District v. Ball, supra.*

Tennessee's Campaign Financial Disclosure Act does not run afoul of this three part test. First, informing the voting public of how elections are financed is a clearly secular purpose. An informed public is better able to make choices between candidates and between causes. Second, the primary effect of the Act is to inform the voting public of campaign financing. The fact that the statute applies to a broad range of groups is an important indication of a secular effect. *Widmar v. Vincent,* 454 U.S. 263 (1981). Clearly, the Act does not advance or inhibit

religion. All religious and non-religious political campaign committees are treated alike. No benefits are provided. Any requirements placed on religious organizations by the Act are no different from those placed on other groups who fall within the purview of the Act. The Act cannot be viewed as either an endorsement or a disapproval of religion.

Third, the Campaign Financial Disclosure Act does not foster excessive entanglement with religion. Entanglement is a question of kind and degree. *Lynch v. Donnelly*, 435 U.S. at 684. The prohibition is against *excessive* entanglement. Generally, excessive entanglement exists where there is "comprehensive, discriminating and continuing state surveillance . . .," *Lemon v. Kurtzman*, 403 U.S. at 619, or "state inspection and evaluation of the religious content of a religious organization . . .," *Id.*, 403 U.S. at 620. The class affected by the Act is not defined in any way by religious criteria. Nor is the information sought religious in nature.

Appellants' arguments in the courts below have focused upon the assertion that the administrative burden of registering and filing under the Act and the possible investigation by the Attorney General constitute excessive entanglement. Yet, no continuing surveillance is required and the information sought does not reveal the inner workings or financial status of the organization required to file the disclosure. There is no danger of governmental direction of churches. The adminstrative burden, which is directly related to the State's compelling interests, is relatively insignificant and can "be readily performed within the churches' present organizations." *Bemis Pentacostal Church v. State of Tennessee*, 731 S.W.2d at 903.

The investigation by the Attorney General required by Tenn. Code Ann. § 2-10-109 would not constitute excessive entanglement either. In *Ohio Civil Rights Commission v. Dayton Christian Schools,* — U.S. —, 106 S.Ct. 278, 2734 (1986), this Court found that the "Commission violates no constitutional rights by merely investigating the circumstances of Hoskinson's discharge in this case, if only to ascertain whether the ascribed religious-based reason was in fact the reason for the discharge." In an investigation under Tenn. Code Ann. § 2-10-109, it is clear that the Attorney General merely looks to see if the organization made contributions and/or expenditures to influence an election and if any individuals gave the organization a contribution of more than one hundred dollars toward an expenditure. This investigation would be far less onerous than the one approved by this Court in *Dayton Christian Schools.* There would be no evaluation of doctrinal matters. No evaluation would be made as to the organization's religious beliefs. There would be no determination of questions of intent, motive or pretext.

III.

THERE IS NO SUBSTANTIAL ISSUE AS TO WHETHER THE STATE PROVIDED SUFFICIENT REASONS TO JUSTIFY THE APPLICATION OF TENNESSEE'S CAMPAIGN FINANCIAL DISCLOSURE LAW TO THE APPELLANTS

The appellants argue that this Court should hear this appeal on the grounds that the State provided no compelling reasons sufficient to justify application of Tennessee's Campaign Financial Disclosure Law to them. This

argument ignores the justifications set forth by the Tennessee Supreme Court in its opinion in this case as follows:

> The recent history of campaign financial abuses as well as growth and possible dominance of special political action committees make the state's disclosure requirements necessary to allow the public to have some gauge by which to assess the sources, content and frequency of campaign publicity and activity. The informational purpose of disclosure is no less compelling in referenda. Referenda are the most direct expression of popular will and should be conducted in an open forum for debate of public policy. Unlike candidate elections, which occur periodically to provide the electorate the opportunity to oust unpopular or corrupt public officials, referenda often commit the state or its political subdivisions to what may be, as a practical matter, essentially irreversible and costly courses of action. Vigorous, free, well-informed, and public debate can only be enhanced by disclosure of campaign financing in both referenda and candidate elections. No faction with access to substantial financial resources should be able to distort the process by flooding the forum with media campaigns without at least disclosing this fact to the voters. Any group that wishes to participate in the process through financing of election outcomes specific advocacy should reveal the extent of this financial involvement to the public. This is all that the people of the state of Tennessee have asked of groups directly participating in election campaigns through the mechanism of the Campaign Financial Disclosure Act.

Bemis Pentacostal Church v. State of Tennessee, 731 S.W. 2d at 904.

Simply stated, there is no necessity in putting on proof that informing the voters of how an election is financed is a

compelling interest when this Court in the *Buckley* case has already indicated that such an interest will be sufficient to justify such an intrusion on the First Amendment right of such groups. In the case of *Minnesota State Ethical Practices Board v. National Rifle Assn. of America,* 761 F.2d 509 (8th Cir. 1985), the Eighth Circuit Court of Appeals applied the compelling interest this Court set forth in *Buckley* under the Federal Election Campaign Act of 1971 to Minnesota's Ethics in Government Act, stating:

> The state of Minnesota's interest in disclosure outweighs any infringement of the appellant's First Amendment rights. The infringement in this case is no greater than that in *Buckley,* because the disclosure requirements here parallel those in the campaign act.

Id. at 512. Likewise, Tennessee's Campaign Financial Disclosure Law parallels that of *Buckley* in terms of the disclosure requirements. As the Tennessee Supreme Court indicated, the fact that this is a referendum election does not make the State's interest in providing any information to the voters as to how the election is financed any less compelling.

———o———

CONCLUSION

The thrust of the appellants' argument is that this Court has never directly addressed the question of whether the State can constitutionally require disclosure of financial participation in referenda elections. As a basis for granting jurisdiction in this case, the appellants argue that the *Talley* decision which struck down a law prohibiting anonymous distribution of campaign literature applies in this case. This Court in *Buckley* has already indicated that the *Talley* analysis does not apply to campaign disclosure laws; moreover, in both *Bellotti* and *CARC* this Court has implicitedly approved requiring disclosure of campaign financing in referenda elections. Accordingly, this Court should either dismiss or affirm this appeal.

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No. 87-317

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

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STATE OF TENNESSEE, *et al.*,
Appellees.

On Appeal From The Judgment Of The Supreme Court Of The State Of Tennessee

APPELLANTS' BRIEF IN RESPONSE TO MOTION TO DISMISS OR AFFIRM

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IN THE

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---

APPELLANTS' BRIEF IN RESPONSE TO MOTION TO DISMISS OR AFFIRM

ARGUMENT

I. THE CONSTITUTIONALITY OF DISCLOSURE REQUIREMENTS IN REFERENDA IS NOT SETTLED LAW.

The appellees' motion to dismiss or affirm reveals the very reasons that this Court should grant plenary review of this case. Upon inspection, the appellees' attempts to show that the question of the constitutionality under the First Amendment of campaign financial disclosure laws in

referenda presented by this case is settled law ends up emphasizing how unsettled and important the question is.

The appellees cook up a muddled stew to show that the issue of the constitutionality of disclosure requirements in referenda campaigns has been clearly decided by implication, an argument that seems self-contradicting. They take selected facts from various cases to approximate the situation in this case, add a dash of reasoning from one case and generous helpings of dicta from others, and come to the conclusion that this case presents no substantial federal question. The appellees point to the disclosure requirements in the statute upheld in *Buckley* v. *Valeo*, 424 U.S. 1 (1976) (per curiam), and the fact that referenda were at issue in *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765 (1978), and *Citizens Against Rent Control* v. *City of Berkeley*, 454 U.S. 290 (1981), and rely heavily on brief dicta contained in *Citizens Against Rent Control* and *Bellotti*. What they ignore is that the state interest recognized in *Buckley* and which the appellees specifically relied on below has been limited by this Court to candidate elections; that disclosure requirements were not at issue in *Citizens Against Rent Control* and *Bellotti;* and, that no compelling state interest was recognized in *Bellotti* or *Citizens Against Rent Control* as justifying any restriction on free speech in referenda.

In order to paper over some of the holes in their reasoning, the appellees now assert that the compelling state interest primarily served by the Tennessee Campaign Financial Disclosure Act of 1980 is informing the electorate of how referendum campaigns are financed. In the court below, the appellees repeatedly relied on the state interest of preventing corruption recognized in *Buckley*. They argued that even though there are no candidates to corrupt in a referendum, the process itself could be cor-

rupted. Informing the public of how referendum campaigns were financed was the chosen means to prevent this corruption. Now the state has elevated this means to a compelling interest in itself. Unfortunately for appellees, this Court has never recognized a state interest in informing the electorate as justifying restrictions on free speech during campaigns. In fact, the Court has specifically rejected as justification for campaign speech restrictions the interest of maintaining an informed electorate. *Brown* v. *Hartlage*, 456 U.S. 45 (1982), *accord Commonwealth* v. *Dennis*, 329 N.E.2d 706 (Mass. 1975). The fact, accurately pointed out by appellees, that the restrictions in those cases were of a different nature than the disclosure requirements here cannot by some reverse reasoning establish that this interest will justify disclosure requirements.

Finally, and most importantly, the appellees ignore the fact that the statute at issue here contains more than what appellees constantly characterize as "simple disclosure requirements." This statute operates as a prior restraint. Even the passage from *Buckley*, 424 U.S. at 81-82, cited by appellees in their motion (p. 11-12), recognizes that systems of prior restraint are harder to justify than disclosure requirements.

Appellees have attempted to portray the issue in this case as settled law by drawing parallels, analogies, and conclusions that not only are unsupported by this Court's precedents but represent an improper method of constitutional analysis.

> Because regulation of the noncommunicative aspects of a medium often impinges to some degree on the communicative aspects, it has been necessary for the courts to reconcile the government's regulartory interests with the individual's right to expression.

> "'[A] court may not escape the task of assessing the First Amendment interest at stake and weighing it against the public interest allegedly served by the regulation.'" *Linmark Associates, Inc.* v. *Willingboro*, 431 U.S. 85, 91 (1977), quoting *Bigelow* v. *Virginia*, 421 U.S. 809, 826 (1975). Performance of this task requires a particularized inquiry into the nature of the conflicting interests at stake here, beginning with a precise appraisal of the character of the ordinance as it affects communication.

Metromedia, Inc. v. *San Diego*, 453 U.S. 490, 502-503 (1981) (opinion of White, J.). Therefore, this Court's decision in cases involving other statutes with other types of restrictions cannot be relied upon as settling this case. It should be noted that the decisions in *Buckley, Bellotti*, and *Citizens Against Rent Control*, which the appellees argue have clearly decided the issue in this case, are the very decisions that the Tennessee Court of Appeals relied on to reach the opposite conclusion. To determine whether the burden on First Amendment rights imposed by the Tennessee statute is constitutional, a precise appraisal of the character of that ordinance, the interest purportedly served, and its effect on free speech is required.

II. A SUBSTANTIAL ISSUE PRESENTED IN THIS CASE IS THE CONSTITUTIONALITY OF THE APPLICATION TO CHURCHES OF A CAMPAIGN DISCLOSURE LAW THAT ACTS AS A PRIOR RESTRAINT.

The appellees also assert that the appellants have not presented any substantial question regarding the application of the Act to nonpolitical groups and churches in particular. The main thrust of their argument is based on *Heffron* v. *International Society for Krishna Consciousness*, 452 U.S. 640 (1981), and the notion that some

principle of fairness requires applying the Act to all organizations. This argument reverses the normal requirement that the state must prove the necessity of a broad application of an act restrictive of First Amendment rights and places the burden on appellants to prove an exemption is required. As stated in the appellants' Jurisdictional Statement, broad application of campaign registration and disclosure acts to nonpolitical groups has been rejected by lower federal courts. *New York Civil Liberties Union* v. *Acito*, 459 F.Supp. 75 (S.D. N.Y. 1978); *American Civil Liberties Union* v. *Jennings*, 366 F.Supp. 1041 (D. D.C. 1973), *vacated as moot sum nom Staats* v. *ACLU*, 422 U.S. 1030 (1975); *United States* v. *National Committee for Impeachment*, 469 F.2d 1135 (2d Cir. 1972).

Appellees' attempt to distinguish *National Committee for Impeachment* and *Jennings* by saying that those decisions turned on the nature of the statements made (i.e., whether or not they were outcome specific) rather than the nature of the orgnizations making those statements, is simply not an accurate characterization of those decisions. Appellees cite *Iowans for Tax Relief* v. *The Campaign Finance Disclosure Commission*, 331 N.W.2d 862 (Iowa), *appeal dismissed*, 464 U.S. 879 (1983), for the proposition that this Court has already determined that application of campaign financial disclosure requirements to organizations not created for the support or defeat of candidates or ballot issues presents no substantial federal question. That case does not support such a proposition.

The Iowa law involved in that case limited the definition of political committees to organizations "organized for the purpose of accepting contributions, making expenditures, or incurring indebtedness . . . for the purpose of supporting or opposing a candidate for public office or

ballot measure." 331 N.W.2d at 864. The appellant in *Iowans for Tax Relief* amended its articles of incorporation to show a corporate purpose of promoting the passage of a particular ballot measure. *Id.* at 865. It was this articulated corporate purpose that brought the appellant within the scope of the Act. *Id.* at 866.

The issue presented in this case, application of the Tennessee Act to churches, is significantly different, in a constitutional sense, from application of the Iowa law to a group whose primary function is lobbying and whose corporate charter reflects a purpose to win passage of a particular ballot measure. Further, the questions presented, as framed in the Jurisdictional Statement filed in this Court, did not present the issue to this Court as it is presented by this case. The only question presented in *Iowans for Tax Relief* regarding the nature of the organizations subject to the Iowa Act read as follows:

> Whether the requirement that a nonpartisan organization of continuous existence file detailed reports every 30 days following an election until the organization is dissolved is an unconstitutional burden on associational rights of permanent organizations?

(Jurisdictional Statement filed in *Iowans for Tax Relief* v. *The Campaign Finance Disclosure Committee*, No. 83-101, at 4).

Appellees' citation to *Meese* v. *Kenne*, ___ U.S. ___, 107 S.Ct. 1862 (1987), and the accompanying argument trivializes the appellants' objections to the Tennessee Act. Their objections are not based upon the pejorative connotations of the word "political." Rather, they object to registering with the state as a precondition to exercising their right to address moral and ethical issues in the public forum. Further, to classify churches as political campaign committee distorts their religious role in the

eyes of those to whom they seek to minister. Such a state-imposed restriction on appellants' ministry has had the effect of chilling their free exercise of religion and would draw churches into entangling subservience to government (Tr 15, 66-67; *see* also Exhibit 7; App. p. 57a). Appellants' objections are theologically based (Tr 42, 111), thus impacting on their First Amendment rights.

III. WHETHER ACTUAL PROOF OF THE STATE'S INTEREST IS NECESSARY IS A QUESTION OF SUBSTANTIAL CONSTITUTIONAL MAGNITUDE.

Appellees argue that appellants will become intermediaries for funneling large contributions from those wishing to avoid the Act (Motion to Dismiss or Affirm, p. 19) and accuse the appellants of ignoring the conclusions of the Tennessee Supreme Court regarding the justifictation for the Act's requirements (Motion to Dismiss or Affirm, p. 26). It is not that appellants ignore the Tennessee Supreme Court's conclusions, it is just that those conclusions are unsupported by the record, as is appellees' argument that appellants act as some sort of intermediaries. Appellees do not seem bothered by this lack of record support. They end their motion by stating that there is "no necessity of putting on proof" of the compelling state interest asserted.

Once again, appellees misunderstand the nature of constitutional litigation.

> "In general, constitutional litigation demands fact analysis of the most particularized kind." Karst, *Legislative Facts in Constitutional Litigation*, 1960 Sup. Ct. Rev. 75, 75. In the First Amendment area especially, the Supreme Court has stressed the need for "a particularized inquiry into the nature of the interests at stake." *Metromedia*, 453 U.S. at 503. It is questionable whether "assumtions and widely-held

beliefs" have a role to play in such an analysis.

New Jersey Citizens Action v. *Edison Township*, 797 F.2d 1250 (3d Cir. 1986), *cert. denied sub nom Piscataway Township* v. *New Jersey Citizen Action*, 107 S.Ct. 1336 (1987).

CONCLUSION

The issues presented by this case are substantial and unsettled questions of federal constitutional law. They affect the most fundamental constitutional rights of appellants and should be decided after plenary review by this Court.

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BRIEF AMICUS CURIAE

OF THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS, THE CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS, THE CHRISTIAN LEGAL SOCIETY, THE NATIONAL ASSOCIATION OF EVANGELICALS, AND THE NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A., IN SUPPORT OF PLENARY REVIEW OF THIS APPEAL

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici curiae are major religious bodies in the United States, or membership organizations concerned with the preservation of religious freedom. They have obtained the consent of the parties to participate in this appeal by the filing of this brief. The original and a copy of the consent letters of counsel of record for the parties have been submitted to the Clerk of this Court.

Pursuant to Rule 36.1 of this Court, amici file this brief in order to call to the attention of this Court the impact of this litigation on the autonomy and integrity of all religious bodies, irrespective of their various positions on the morality of sale of liquor by the drink. In the view of the amici, the First Amendment theory articulated by the Tennessee Supreme Court impermissibly subjects religious bodies to extensive governmental regulation and impermissibly burdens the right of religious bodies to share publicly their sincerely held religious views on matters of public concern. The statement of interest of each amicus participating in this brief follows.

The Baptist Joint Committee on Public Affairs consists of representatives elected by each of eight cooperating Baptist conventions in the United States: American Baptist Churches in the U.S.A.; Baptist General Conference; National Baptist Convention of America; National Baptist Convention, U.S.A., Inc.; North American Baptist Conference; Progessive National Baptist Convention, Inc; Seventh Day Baptist General Conference; and Southern Baptist Convention.[1] These Baptist groups have nearly 30 million members and reflect the traditional Baptist concern for proper church-state relations. The Baptist Joint Committee has as one of its mandates the obligation to respond "whenever Baptist principles are involved in, or are jeopardized through, governmental action." Among Baptists, the freedom of the church from entangling relationships with the government is a fundamental and sacred principle.

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[1] The Executive Board of the Tennessee Baptist Convention appeared as Amicus Curiae in the court below on behalf of Southern Baptist churches in Tennessee. Because the case is now of national import, the Baptist Joint Committee is the proper representative of Baptist concerns.

The Catholic League for Religious and Civil Rights is a civil rights and anti-defamation organization, national in membership, dedicated to the defense of religious liberty and freedom of expression. This appeal raises substantial questions relating to both of these League concerns. When the government invokes state power to conduct intrusive and far-reaching examinations of internal church documents, religious liberty suffers. When the government chills legitimate expressive activity crucial to effective church teaching on matters of public concern, freedom of expression cannot flourish.

The Christian Legal Society is a non-profit professional association of 3,500 Christian judges, attorneys, law professors and law students founded in 1961. The Center for Law & Religious Freedom is a division of the CLS founded in 1975 to protect the free exercise of religion, supporting the appropriate accommodation by the state of religious beliefs and practices and the respect for religious rights required by the First Amendment.

The National Association of Evangelicals, located in Wheaton, Illinois, is a non-profit association of evangelical Christian organizations, including fifty thousand churches from seventy-eight denominations. It serves a constituency of 10 to 15 million people through its commissions and affiliates.

The National Council of Churches of Christ in the U.S.A. is a community of thirty-one religious communions numbering over 40 million members. Some of these communions would agree with the views expressed by the Appellant churches concerning sale of alcohol; some of them would disagree. All of them have agreed, however — through their representatives on the Governing Board of the National Council of Churches — in support of religious bodies and all citizen groups to speak and to act on questions of public policy without extensive and intrusive regulations, including public disclosure of detailed, itemized financial information about the members of their religious bodies. The Governing Board of the National Council of Churches has specifically recommended that its member communions not impair the relationships of confidence and

trust within the religious community by disclosing to outsiders "the names of contributors, members, constituents . . . [or] personnel files, correspondence or other confidential and/or internal documents or information."

ARGUMENT

I.

THIS APPEAL PRESENTS SUBSTANTIAL FEDERAL QUESTIONS UNDER THE RELIGION CLAUSE AND THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT BECAUSE IT INVOLVES COURT-SANCTIONED IMPOSITION OF EXTENSIVE GOVERNMENTAL REGULATION OF RELIGIOUS BODIES ATTEMPTING TO SPEAK PUBLICLY ON MATTERS OF PUBLIC CONCERN.

This appeal is brought from a judgment of the Tennessee Supreme Court holding that the Tennessee Campaign Financial Disclosure Act of 1980 [the Act] may constitutionally be applied to Appellants, thirteen churches which sponsored paid advertisements on a local referendum issue concerning the sale of liquor by the drink. The Act requires a political campaign committee [PCC] to comply with extensive and detailed financial disclosure statements. The Act defines a PCC as any group of two or more individuals making expenditures exceeding $250 per year to support or oppose a measure offered to the voters for their consideration. On the view of the Tennessee Supreme Court, the Act may require religious bodies wishing to express biblically based views on a matter of public concern (1) to register with the State as a PCC before accepting any contributions to promote, advertise, or publicly advocate sincerely held, conscientious convictions, and (2) to file with the State detailed financial statements, including the names and addresses of all persons who contribute more than $100 to the church for this purpose.

Although the Act does not contain an absolute prohibition against participation in a political campaign by a religious body, the application of the Act to religious bodies severely chills the ability of these oranizations to advance their positions on a wide variety of public policy matters.

The court below erroneously ruled that the "sole determinative issue is whether the Act violates the free speech clause of the First Amendment." *Bemis Pentecostal Church v. State*, ___Tenn___, 731 S.W. 2d 897, 903 (1987); Jurisdictional Statement [JS], at 10a. Amici agree with the Appellant churches that the free speech clause is clearly implicated in this case and leads to an opposite result from that reached below. See pp. 16-18, *infra*, and see JS *passim*. But the application of the Act to thirteen churches attempting to announce their religiously based message on a matter of public concern clearly implicates the religion clause of the First Amendment as well. In the interest of avoiding duplicative briefing, the primary focus of this brief is upon the religion clause.

A. The Religion Clause Affords Protection against Extensive Regulation of a Religious Body which Chooses to Announce Sincerely Held Religious Beliefs that Relate Directly to Public Policy Questions.

Amici do not claim that when religious organizations choose to "enter a public forum and spread their views," *Heffron v. ISKCON*, 452 U.S. 640, 653 (1981), they are always entitled to protection greater than that enjoyed by non-religious social or political organizations. By the same token, however, religious bodies are surely entitled at the very least to no lesser degree of protection than that enjoyed by their secular counterparts. See, e.g., *McDaniel v. Paty*, 435 U.S. 618, 640 (1978) (Brennan, J., concurring). It is likewise clear that special concerns of religious autonomy and integrity arise when the government seeks to regulate a religious body which are not present when it seeks to regulate a secular organization. See, e.g., *Corp. of Presiding Bishop v. Amos*, 483 U.S. ___, 107 S.Ct. 2862, 2871

(1987) (Brennan, J. concurring); and see *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Specifically the application of the Act to the Appellant churches violates both provisions of the religion clause by requiring these churches (1) to register as a PCC as a condition of exercising their right to speak in opposition to a referendum issue of moral concern, (2) to elect a special officer of the church designated as a political treasurer, and (3) to disclose to the public the names and addresses of all church members who contribute more than $100 to the church's effort to announce its religious message on matter of public concern.

(i) Free Exercise Concerns

The record in this case is replete with undisputed testimony that the Appellants were compelled to speak out publicly on the liquor-by-the-drink referendum because of their sincerely held religious convictions.[2] The *religious* nature of the efforts of the thirteen Appellant churches to announce their religious message to the participants in the local referendum in Jackson is readily apparent when viewed in the context of testimony offered to the Congress by their national counterparts. Like the Appellants, these representatives of a host of denominations and other religious bodies are called upon regularly to express the views of religious groups on a wide variety of social and political issues with pressing ethical components.

For example, in testimony before the House Ways and Means Committee in 1972, John Baker explained the role of the Amicus Baptist Joint Committee on Public Affairs as follows:

> Some religious entities believe that their religious faith commits them to a complete withdrawal from

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[2] See, e.g., testimony of Rev. John Lee Taylor, Pastor of West Jackson Baptist Church, Tr. at 55-57; testimony of Forest Montgomery, Tr. at 134; testimony of Robert A. Destro, Tr. at 188-189, 191-192, 195; and testimony of Dean Kelley, Tr. at 145; and see JS at 61a-66a.

> the secular world. Others are compelled by their faith into an active participation in nearly every aspect of that secular world. If they are to be good stewards of their religious influence these people sincerely believe they must be involved in the formation of public policy. War and peace, human welfare, civil rights, abortion, and education are all public issues, but they have attributes which make them also religious issues.

Legislative Activity By Certain Types of Exempt Organizations, Hearings Before the House Ways and Means Committee, 92d Cong., 2d Sess. at 282 (1972).

Dr. J. Elliott Corbett entered into the record of these hearings a policy declaration of the General Conference of the United Methodist Church:

> We believe that churches have the right and the duty to speak and act corporately on those matters of public policy which involve basic moral or ethical issues and questions. Any concept of church-government relations which denies churches this role in the body politic strikes at the very core of the religious liberty. The attempt to influence the formation and execution of public policy at all levels of government is often the most effective means available to churches to keep before modern man the ideal of a society in which power [is] made to serve the ends of justice and freedom for all people.

Dr. Corbett commented on this policy statement as follows:

> This statement makes clear that the church should speak out on public policy questions and seek to influence the formation of public policy as it relates to the government. The declaration points out the inappropriateness of denying the church its role in relating to public policy and that such a denial would threaten religious liberty. The question here arises as to whether 'the free exercise' of religion, as provided in the First Amendment is denied if limitations are

> placed on church lobbying in areas affecting the church's purpose in society. In other words, the *First Amendment guarantee of 'the free exercise of religion' should not permit the state to tell the church when it is being religious and when it is not.* The church must be permitted to define its own goals in society in terms of the imperatives of its religious faith. Is the Christian church somehow not being religious when it works on behalf of healing the sick, or for the rights of minorities, or as peacemaker on the international scene? No, the church itself must define the perimeters of its outreach on public policy questions.

Id. at 303, 305 (emphasis added). See also Statement of United States Catholic Conference, *id.* at 307-312; and Statement of National Jewish Community Relations Advisory Council, *id.* at 99.[3]

The congressional testimony referred to above demonstrates conclusively that for many religious bodies, political speech such as that engaged in by the Appellant churches is a form of religious ministry. The undisputed testimony on the record of this case further demonstrates that the application of the Act to the Appellant churches has imposed significant burdens on their religious ministry. Dr. Madden, for example, testified that

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[3] Four years later, in similar hearings before the House Ways and Means Committee on legislation to regulate the lobbying efforts of exempt organizations, representatives of religious bodies were even more emphatic than in their earlier testimony that attempts to regulate the participation of religious bodies in matters of public concern create special constitutional problems of abridgement of free exercise of religion. See, e.g., Statement of James E. Woods, Jr. on behalf of the Baptist Joint Committee on Public Affairs, in *Influencing Legislation by Public Charities*, Hearings Before the House Ways and Means Committee (1976); and see Statement of the Lutheran Council in the U.S.A., *id.* at 75-76; Statement on Behalf of the National Council of Churches of Christ in the U.S.A., *id.* at 81-82; and Statement of the United States Catholic Conference, *id.* at 90.

the characterization of a religious organization as a PCC under the Act has had a "devastating . . . chilling and discouraging and inhibiting" effect upon churches in Tennessee which would have spoken out on issues of public concern, but for the restrictive provisions of the Act. JS, 63a. No sensible interpretation of Free Exercise jurisprudence can fail to conclude that the Act has imposed a significant, indeed a substantial, burden on the freedom of religious organizations to announce their message on public policy matters. The imposition of such a burden on religious organizations merits plenary review by this Court.

This Court, moreover, should consider the impact of the rule announced by the lower court not simply upon the Appellant churches in this case, but upon religious bodies throughout the country which have since the dawn of the republic regarded it part of their religious ministry to announce their religious message on a wide variety of matters of social concern. As Professor Tribe has noted, "churches and religious groups in the United States have long exerted powerful political pressures on state and national legislatures, on subjects as diverse as slavery, war, gambling, drinking, prostitution, marriage, and education." L. Tribe, *American Constitutional Law* 867 (1978). Other matters of public concern which have been addressed by religious groups recently include nuclear war, capital punishment, adequate health care, foreign policy and immigration policies relating to Latin America or South Africa. The freedom to address these and other vexing issues from a religious perspective should not be conditioned upon the regulations imposed upon the Appellant churches by the court below.

Requiring churches to register as PCCs in order to address the most pressing moral and social issues of our day substantially burdens the free exercise rights of religious bodies. Contrary to the history of religious freedom in this country, the State seeks, in effect, to license those churches which choose to proclaim their vision of the good in the

political order.[4] As construed by the lower court, the Act not only requires churches to obtain advance permission from the State to engage in one of the most fundamental acts of ministry, it also distorts the public's perception of that ministry. Although the time, energy and effort required in order to comply with the requirements of the Act is demonstrably burdensome, see testimony of Dean Kelley, Tr. 149, that administrative burden is not at the center of the concerns of the amici. Nor is the reluctance of a religious body to register with the State as a PCC a matter of distaste or scorn for the political order. The religious objection of the amici to the application of the Act to a religious body is that it distorts that body's religious message by communicating to the public that it is not a religious group acting religiously, but simply another political interest group acting out of characteristcally self-interested political considerations. This distortion of the church's prophetic ministry constitutes an additional burden upon free exercise of religion worthy of plenary review by this Court.

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[4] This Court has frequently relied on legal history as an aid to resolving current cases dealing with the Religion Clause. See, e.g., *Marsh v. Chambers*, 463 U.S. 783 (1983); *McDaniel v. Paty*, 435 U.S. 618 (1978); and *Walz v. Tax Commission*, 397 U.S. 664, 678 (1970). Under this approach this Court should not adopt the theory implicit in the judgment of the lower court because governmental licensing of religious preaching was one of the historical practices which the First Amendment was expressly designed to prohibit. See, e.g., W. McLoughlin, *New England Dissent, 1630-1833: The Baptists and the Separation of Church and State* 441-476 (1971); M. Kammen, *Colonial New York: A History* 157-158 (1975); and Eckenrode, *Separation of Church and State in Virginia* (1910). For a discussion of the repulsion to licensing of dissemination of views by the Press, see, e.g., *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 801 (1978) (Burger, CJ., concurring), and *Lovell v. Griffin*, 303 U.S. 444, 451 (1938). And see *United States v. National Committee for Impeachment* 469 F. 2d 1135, 1140 (2d Cir. 1972) (no First Amendment distinction between newspaper editorial and paid political advertisement, the publication of which does not make the sponsor a political action committee subject to federal regulation).

Even more seriously, the Act has had a chilling effect on the prophetic ministry of religious bodies. This conclusion is supported by the uncontradicted expert testimony in this record; see, e.g., testimony of Rev. Dean M. Kelley, JS, 65a. Indeed, it is likewise clear on this record that the fear of inhibition of free speech is not at all speculative. The record discloses that the Act has already begun to silence the churches. Rev. Maurice Coleman, Pastor of the First Baptist Church, Waverly, TN, testified that the burden which the Act imposed on his church was so severe that his church refrained from speaking out on a similar referendum, despite deeply held religious convictions on the issue presented to the public in his community, Tr. 104-112; see JS, 61a-62a. Dr. Thomas J. Madden, Executive Secretary of the Executive Board of the Tennessee Baptist Convention likewise testified that other churches in Tennessee had been deterred from addressing referendum issues publicly for fear that the government would label them as PCCs. JS, 63a (impact of the Act on Baptist churches "devastating, . . . chilling and discouraging and intimidating"). The severity of the chilling effect of the Acct constitutes a separate reason for plenary review of this appeal.

Having demonstrated that the ability of religious bodies to make public statements of a religious nature on matters of public concern is burdened by the application of the Act to religious bodies, the Appellant churches should be exempt from its coverage unless the State can demonstrate that it has utilized the least restrictive means of achieving a truly compelling governmental interest. *Hobbie v. Unemployment Appeals Commission*, 480 U.S. ___, 107 S.Ct. 1046, 1094 (1987); *Thomas v. Review Board*, 450 U.S. 707 (1981); *Sherbert v. Verner*, 374 U.S. 398 (1963). The State failed to meet its evidentiary burden of proving that any compelling state interest exists for extending coverage of the Act to religious bodies.

The view that protection of the integrity and fairness of the political process is a legitimate and even a "compelling" governmental interest, is hardly exceptionable as a general

principle. As the Tennessee Supreme Court stated: "Considering that the results of a referendum often entail enduring and significant changes in community life and that diverse interests compete to influence the public policy of the state at every level of political action, the public has a right to know at a minimum how campaigns on public issues are financed and by whom." *Bemis Pentecostal Church v. State, supra*, 731 S.W. 2d at 903 (1987); JS, at 11a.

This case, however, involves bona fide religious organizations attempting to engage in clearly protected activity. Hence casual invocation of the "infamous Watergate slush fund," *id.* at 904, JS 12a, is spurious, raises false connotations by innuendo, and does not provide a sufficient justification for the application of the Act to a religious body wishing to participate in a referendum. This is true for five reasons. First, the rationale for restricting involvement in the political process does not apply with equal force to all groups. As this Court recognized last Term, a State may have a compelling interest in limiting the campaign contributions of for-profit organizations, but a far less significant interest in regulating the political freedom of a not-for-profit organization. *FEC v. Massachusetts Citizens for Life*, 479 U.S. ___, 107 S.Ct. 616 (1986).

Second, this record is wholly devoid of the slightest hint of "corruption" which the lower court invoked as the rationale for its rule. As this Court clarified in *FEC v. National Conservative PAC*, 470 U.S. 480 (1985), an unspecified concern about "hypothetical potential for corruption" does not articulate a rationale for regulating "the presentation to the electorate of varying points of view" on issues of public concern. *Id.* at 498. The State offered no proof whatever either that any political group in Tennessee has ever dissembled to the point of cloaking itself as a church solely to avoid the requirements of the Act, or that such misrepresentation is likely to occur in the future. Upon close inspection, the governmental interest which the Tennessee Supreme Court deemed "compelling" turns out to be a merely speculative worry about an "imaginable but totally implausible evil."

Wolman v. Walter, 433 U.S. 229, 260, n.6 (1977) (Marshall, J., concurring and dissenting).

Third, even if fraud of this magnitude were to occur, the State is not without power to sanction it. See, e.g., *Ballard v. United States*, 329 U.S. 187 (1946). A reviewing court, moreover, need not plumb the depths of its imagination to discover an equally effective alternative means of enforcing the governmental interest which the lower court found "compelling," for in this case the Tennessee legislature expressly provided criminal sanctions in the Act wholly adequate to the governmental interest of protecting against potential fraud, § 2-10-110 (a). For this reason it is unnecessary to construe the Act, as the lower court did, to apply across the board to all religious bodies wishing to be heard on matters of public concern.

Fourth, this Court should not accept the State's argument that its interest in preventing election fraud requires expansive application of the Act to activity of churches otherwise protected by the First Amendment because that argument cannot be squared with the text of the Act. The Act explicitly exempts from the reporting requirements news organizations protected under the free press clause of the First Amendment when, for example, they engage in political speech in the editorial process, § 2-10-102(3)(B). This statutory provision renders easy the search for a less restrictive alternative means of enforcing the interest of the State. All that a reviewing court must do is require the State to extend to religious bodies protected under the religion clause of the First Amendment an exemption for religious organizations wishing to be heard on matters of public concern similar to that which the Act affords to news organizations thought to be protected under the free press clause of the same amendment.

Fifth, unless the lower court is reversed, greater protection will be afforded to for-profit news organizations than to not-for-profit religious organizations. Erratic line-drawing of this sort impermissibly prefers one kind of First Amendment corporation over other groups protected under the same

Amendment. This result is impermissible under *Widmar v. Vincent*, 454 U.S. 263 (1981), where this Court ruled that a public university which creates a forum generally open to students may not favor one form of speech over another because of the religious character of the speech. It is likewise impermissible under *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), where this Court invalidated a state statute prohibiting expenditures by for-profit corporations for the purpose of influencing the vote on referendum proposals on the view that this kind of regulation abridges expressive activity "at the heart of the First Amendment's protection." *Id.* at 776. As Justice Powell stated in *Bellotti*: "If a legislature may direct business corporations to 'stick to business,' it also may limit other corporations — *religious*, charitable, or civic — to their respective 'business' when addressing the public. Such power in government to channel the expression of views is unacceptable under the First Amendment. Especially where, as here, the legislature's suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended." *Id.* at 784-785 (emphasis added). [5] There is more than a subtle irony that the primary

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[5] The lower court distinguished *Bellotti* on the ground that the Massachusetts statute invalidated in *Bellotti* imposed direct limits on speech, unlike the Tennessee Act, characterized as imposing mere financial disclosure requirements. *Bemis, supra*, 731 S.W. 2d 897, 906 (1987); JS, at 16a. *Bellotti* may not be disposed of quite so readily. As this Court stated in *Bellotti*, to ask whether corporations have free speech rights is to pose the wrong question. The inquiry should focus on the type of speech at issue, not its source: "If the speakers here were not corporations, no one would suggest that the State could silence their proposed speech. It is the type of speech indispensable to decisionmaking in a democracy. . . . [The] inherent worth of the speech in terms of its capacity for informing the public does not depend on the identity of its source. . . . In the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue. *Police Dept. of Chicago v. Mosely*, 408

beneficiaries of the statutory exemption in the Act are immensely powerful for-profit news media corporations and that the institutions directly burdened by the ruling of the lower court are less powerful not-for-profit religious bodies.[6]

For these reasons, amici urge this Court to grant plenary review of the substantial federal questions affecting free exercise of religion presented in this appeal.

(ii) Establishment Concerns

Amici are also of the view that substantial federal questions are presented in this appeal which arise under the Establishment Clause. Amici do not dispute that the application of the Act to the Appellant churches reflects a secular purpose. *Edwards v. Aquillard*, 482 U.S. ___, 107 S.Ct. 2573 (1987). Two other criteria set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), however, are offended by the decision below. As amici already demonstrated in the discussion of free exercise concerns, pp. 5-14, *supra*, the primary effect of the application of the Act to the Appellant churches has been to *inhibit their religious activity*. A similar, if not identical, concern is reflected in the manifest tendency of the decision below to *entangle the government excessively in religious matters* properly thought to be within the zone of autonomy and associational privacy enjoyed by religious organizations.[7]

U.S. 92, 96 (1972)." *Id.* at 777, 784. The lower court's distinction of *Bellotti* overlooks the uncontroverted evidence on this record that the application of the Act to religious bodies has already had the very effect condemned in *Bellotti*: governmental preference as to who may address a public issue.

[6] This Court has repeatedly clarified that the institutional press does not have free speech rights superior to those of the general public. See, e.g., *Bellotti, supra*, 435 U.S. at 798 (Burger, C.J., concurring); *Pell v. Procunier*, 417 U.S. 817, 834 (1973); *Branzburg v. Hayes*, 408 U.S. 665, 684-685 (1972).

[7] See, e.g., *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190

On a record far less clear on the probability of governmental entanglement than the record in this case, this Court ruled that the mere possibility of or potential for such entanglement sufficed to invalidate an otherwise lawful statute. *Aguilar v. Felton*, 473 U.S. 402, (1985). See also *Walz v. Tax Commission*, 397 U.S. 664, 674-675 (1970) (sustaining tax exemption of property used exclusively for public worship because taxation of such property would have the effect of entangling the government in religious matters).

As the uncontroverted expert testimony on this record suggests, see testimony of Dean Kelley, mandatory disclosure of internal church records to the general public and potential governmental scrutiny of such records gives rise to an impermissible level of entanglement with religion. Tr. 149-150. Apart from bona fide investigation of fraud, undue influence, private inurement, or other misconduct, the State has no business scrutinizing the internal financial affairs of religious bodies.[8] As amici demonstrated above, this record does not contain the slightest hint of any basis for legitimate

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(1960), and *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952). *Milivojevich* is illuminative in this appeal, for it safeguards the autonomy of the religious community against the use of the secular judicial process by a dissenting member of the church. A fortiori, use of the judicial process against a religious body by secular authorities should likewise be viewed as inimical to the purpose of the religion clause. The *Kreshik* case reinforces this point, for it commands that the judiciary refrain from intruding on the autonomy of a religious body, just as *Kedroff* had prohibited intrusion in the internal affairs of a religious body by the legislature. In the instant case, it is all the more necessary that the judiciary express greater care about "delicate and sensitive questions arising out of the Religion Clauses" where the Legislature has not affirmatively and expressly directed that a regulatory burden be imposed upon a religious body. *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 507 (1979).

[8] Congress has manifested sensitivity to these concerns. See, e.g., I.R.C. § 6033 (exempting religious bodies from duty to file detailed annual financial report); and see I.R.C. § 7605 (specifying procedures to be followed before a church may be audited).

investigation either of criminal wrongdoing or of civil liability for a tax offense. Because this Court has "long recognized that underlying the establishment clause is the 'objective . . . to prevent, as far as possible, the intrusion of either [church or state] into the precincts of the other' " *Lemon, supra*, 403 U.S. at 614, this Court should grant plenary review of this appeal.

B. The Free Speech Clause Protects Churches No Less Than Other Concerned Citizens or Groups When They Engage in Political Speech on Matters of Public Concern.

The free speech clause grouds a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). Thus this provision affords another ground for finding unacceptable the restrictions on the political speech of religious bodies imposed by the court below. In another case involving restrictions placed by the State of Tennessee upon the civil liberties of religious bodies and their members, Justice Brennan expressly concluded in *McDaniel v. Paty*, 435 U.S. 618 (1978) that the fundamental right to participate in the political process is enjoyed not only by secular institutions and private citizens, but also by religious bodies and their members:

> [R]eligious ideas, no less than any other, may be the subject of debate which is 'uninhibited, robust, and wide open' [citing *Sullivan*]. . . . [T]hat public debate of religious ideas, like any other, may arouse emotion, may incite, may foment religious divisiveness and strife, does not rob it of constitutional protection. The mere fact that a purpose of the Establishment Clause is to reduce or eliminate religious divisiveness or strife, does not place religious discussion, association, or political participation in a status less preferred than rights of

> discussion, association and political participation generally.

Id. at 640; see also plurality opinion of Chief Justice Burger, *id.* at 626. Similarly, in *Walz v. Tax Commission*, 397 U.S. 664 (1970), this Court stated:

> Adherents of particular faiths and individual churches frequently take strong positions on public issues including, as this case reveals in the several briefs amici, vigorous advocacy of legal or constitutional positions. Of course, churches as secular bodies and private citizens have that right.

Id. at 670.[9]

Although the State does not impose an absolute ban on the political speech of religious corporations in the instant case, it does seek to impose regulations which significantly burden the ability of religious bodies to announce their religious message on matters of public concern. It is well settled that any statute which significantly burdens free speech rights may be sustained only on a showing by the government that the statute serves a truly compelling state interest and that the means chosen by the government to achieve this end is the alternative least restrictive of fragile free speech rights, which need "breathing space" in order to survive. See, e.g., *NAACP v. Button*, 371 U.S. 415 (1963). Hence the same analysis set forth as free exercise concerns, pp. 5-14, *supra*, applies with equal force to the analysis of the judgment of the lower court under the free speech clause. [10] Because the view of the free speech clause

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[9] See also *McRae v. Califano*, 491 F.Supp. 630 (E.D.N.Y. 1980), rev'd on other grounds, sub nom. *Harris v. McRae*, 448 U.S. 294 (1980): "It is clear that the healthy working of our political order cannot safely forego the political action of the churches, or discourage it. The reliance, as always, must be on giving an alert and critical hearing to every informed voice, and the spokesmen of religious institutions must not be discouraged nor inhibited by the fear that their support of legislation, or explicit lobbying for such legislation, will result in its being constitutionally suspect." *Id.* at 741.

[10] Whether stated as free exercise concerns or free speech

espoused by the lower court is counterintuitive and flies in the face of the great purposes of political speech in our democracy, this Court should grant plenary review of this appeal in order to address the substantial questions presented under the free speech clause.

II.

THIS COURT SHOULD GRANT PLENARY REVIEW OF THIS APPEAL IN ORDER TO GIVE CLEAR GUIDANCE TO THE LEGISLATURES OF THE SEVERAL STATES CONCERNING THE LIMITS OF STATE CAMPAIGN FINANCE LAWS PURPORTING TO REGULATE RELIGIOUS NOT-FOR-PROFIT ORGANIZATIONS PUBLICLY ENGAGED IN MORAL ADVOCACY ON MATTERS OF PUBLIC CONCERN PRESENTED TO THE ELECTORATE FOR THEIR DELIBERATION AND DECISION.

Because the decision of the court below can have a national impact on religious freedom far beyond the confines of the present litigation, amici append to this brief a table of state statutes regulating various aspects of campaign financing. [11]

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concerns, three conclusions are unavoidable on this record: (1) the Act has the chilling effect of inhibiting religious expression on matters of public concern; (2) the State has not shown a compelling governmental interest to justify the intrusion on protected activity; and (3) the exemption in the Act for news organizations points to a less burdensome means of achieving the governmental interest.

[11] All fifty states impose requirements on groups attempting to communicate with the electorate in candidate elections. Thiry-eight states impose registration and reporting requirements in elections concerning referenda or other ballot measures concerning general public policy. In addition to the Tennessee Act challenged as applied in this appeal, six other states have similarly exempted the press from registration and reporting requirements.

This appeal presents a case of first impression. No other state decision of which amici are aware has expressly ruled that the provisions of the state campaign financing law must be extended to a religious body engaged in moral advocacy on issues of public concern. Only one statute, Iowa Code § 56.2.6, expressly includes religious organizations within the definition section relating to covered political action committees. The plain meaning of the terms of the various state statutes summarized in the Table in the Appendix, however, evinces neither a clear expression of intent to regulate religious bodies, *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 507 (1979), nor any evident concern for the delicacy of religious freedom threatened by including religious bodies among regulated political action committees. This court should grant plenary review of this appeal in order to give clear guidance to the legislatures of the several states concerning the limits of state campaign finance laws purporting to regulate religious not-for-profit organizations engaged in moral advocacy on matters of public concern presented to the electorate for thier deliberation and decision.

CONCLUSION

For the reasons set forth in this brief, amici curiae urge this court to grant plenary review of the substantial federal questions presented in this appeal.

Respectfully submitted,

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APPENDIX

Table of State Statutes Regulating Campaign Expenditures

Table of State Statutes Regulating Campaign Expenditures

State	Citation	Elections Candidate/Issue	<$	Exemptions Purpose	Press
Alabama	17-22-1 et seq.	yes / yes	y	n	n
Alaska	15.13.010 et seq.	yes / yes	y	n	n
Arizona	16-901 et seq.	yes / no	y	n	n
Arkansas	3-1102 et seq.	yes / no	y	n	n
California	12400 et seq.	yes / yes	y	n	y
Colorado	1-45-101 et seq.	yes / yes	y	n	n
Connecticut	9-333 et seq.	yes / yes	y	n	n
Delaware	8001 et seq.	yes / no	y	n	n
Florida	106.01 et seq.	yes / yes	y	n	n
Georgia	21-5-1 et seq.	yes / yes	y	n	n
Hawaii	11-1 et seq.	yes / yes	y	n	n
Idaho	67-6601 et seq.	yes / yes	y	n	n
Illinois	9-1 et seq.	yes / yes	y	n	n
Indiana	3-4-1-1 et seq.	yes / yes	y	n	y
Iowa	56.1 et seq.	yes / yes	y	n	n
Kansas	25-4143 et seq.	yes / no	y	y	n
Kentucky	121.015 et seq.	yes / yes	y	n	n
Louisiana	18:1481 et seq.	yes / no	y	n	n
Maine	1411 et seq.	yes / yes	y	n	y
Maryland	33:26.1 et seq.	yes / yes	y	n	n
Mass.	C55.1 et seq.	yes / yes	y	n	n
Michigan	4.1703(1) et seq.	yes / yes	y	n	n
Minnesota	10A.01 et seq.	yes / yes	y	y	n
Mississippi	23-3-1 et seq.	yes / no	y	n	n
Missouri	130.011 et seq.	yes / yes	y	y	y
Montana	13-1-101 et seq.	yes / yes	y	n	y
Nebraska	49-1401 et seq.	yes / yes	y	y	n
Nevada	2941.002 et seq.	yes / no	y	n	n
New Hamp.	664:1 et seq.	yes / yes	y	n	n
New Jersey	19:44A-1 et seq.	yes / yes	y	n	n
New Mexico	1-19-2 et seq.	yes / yes	y	n	n
New York	14-100 et seq.	yes / yes	y	n	n
N. Carolina	163-278.6 et seq.	yes / yes	y	n	n
N. Dakota	16.1-08-01 et seq.	yes / no	y	y	n
Ohio	3516.10 et seq.	yes / yes	y	n	n
Oklahoma	74 4200 et seq.	yes / yes	n	n	n
Oregon	260.005 et seq.	yes / yes	y	n	n

State	Citation	Elections Candidate/Issue	Exemptions <$	Purpose	Press
Pennsylvania	3221 et seq.	yes / yes	y	n	n
Rhode Island	17-25-2 et seq.	yes / yes	y	n	n
S. Carolina	8-13-610 et seq.	yes / yes	y	n	n
S. Dakota	12-25 et seq.	yes / yes	y	n	n
Tennessee	2-10-101 et seq.	yes / yes	y	n	y
Texas	14.01 et seq.	yes / yes	y	n	y
Utah	20-14-1 et seq.	yes / no	y	n	n
Vermont	2101 et seq.	yes / no	y	n	n
Virginia	24.1-251 et seq.	yes / no	y	n	n
Washington	42.17 et seq.	yes / yes	y	y	n
W. Virginia	3-8-1 et seq.	yes / yes	y	n	n
Wisconsin	11.001 et seq.	yes / yes	y	n	n
Wyoming	22-25-101 et seq.	yes / yes	y	n	n

DEFINITIONS

1) **ELECTIONS:** Any primary, general, or special election.
Candidate: Elections which involve voting for a particular individual for state or local office.
Issue: Elections for a referendum or other ballot measure concerning general public policy.

2) **EXEMPTIONS:** Statutory provision, AG opinion, or case excluding a group from coverage under the registration and reporting requirements.
<$: Y in Table indicates an exemption for expenditures and contributions below a specified dollar amount.
Purpose: Y in Table indicates that in determining whether a group constitutes a political action committee, state authorities are allowed to consider in some fashion the primary purpose or nature of the contributing or expending group. The statutes either exempt groups which are less political in nature, or allow a higher expense threshold before the registration and reporting requirements are triggered.
Press: Y in Table indicates that the statute provides an exemption for the institutional press. N in Table does not mean that the press is necessarily included within the scope of the statute, but that no express exemption, case law, or Attorney General opinion could be located which clearly exempts the press from the registration or reporting requirements of the statute.

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 10835 Santa Monica Boulevard, Los Angeles, California 90025; that on September 23, 1987, I served the within *Brief Amicus Curiae* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

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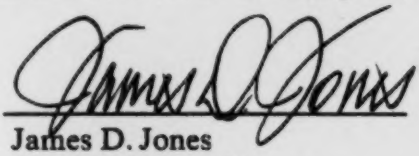
I declare under penalty of perjury that the foregoing is true and correct. Executed on September 23, 1987, at Los Angeles, California.



James D. Jones
(Original signed)